GENERAL COURT-MARTIAL
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

UNITED STATES v. Frank D. Wuterich XXX XX 3221 Staff Sergeant U.S. Marine Corps	GENERAL COURT-MARTIAL GOVERNMENT MOTION IN LIMINE PRELIMINARY DETERMINATION OF ADMISSIBILTY (DEPOSITIONS OF IRAQI WITNESSES) 2 August 2010

1. Nature of Motion. Pursuant to Rule for Courts-Martial 906(b)(13), the Government respectfully requests a preliminary ruling on the admissibility of the videotaped depositions of Iman Waleed Abd Al-Hameed ("Iman"), Abid Al Rahman Waleed Alu Hameed ("Abid"), Safah Yunis Salim Rasif ("Safah"), and Khalid Salman Rasif Hussayn Al-Anzi ("Mr. Al-Anzi"), and their transcriptions.

2. Summary of Facts.

a. On the morning of 19 November 2005, the accused and members of his squad were traveling in a four-vehicle convoy in Haditha, Iraq when the convoy was attacked with an Improvised Explosive Device (IED) resulting in one U.S. fatality. Subsequent to the IED attack, the accused and some of the members of his squad were involved in several engagements in Haditha, Iraq. As a result of those engagements, twenty-four people died. The first engagement took place at the "Roadside" near the intersection of Routes Chestnut and Viper and resulted in the death of five people. The second engagement took place several minutes later in a residential structure called "House 1" and resulted in the death of six people and the wounding of several others. The final relevant engagement

took place several minutes later in a residential structure called "House 2" and resulted in the death of eight people.

b. Several Iraqi civilians were subsequently identified as potentially relevant witnesses concerning the 19 November 2005 events at Haditha, including Iman Waleed Abd Al-Hameed, Abid Al Rahman Waleed Alu Hameed, Safah Yunis Salim Rasif, Khalid Salman Rasif Hussayn Al-Anzi, Dr. Ayad Ghazi Musleh Mushawwah Al-Anzi, Dr. Waleed Abdul Kalik Adbul Fatah Aman, and Jameel Mahmood Aashoor (hereinafter, "Iraqi witnesses"). These witnesses were first interviewed by trial counsel in January 2007.

c. Charges were preferred against the Accused on 21 December 2006 alleging law of armed conflict violations including dereliction of duty and negligent homicide.

d. On 26 November 2007, trial counsel requested that the CDA order a site visit and depositions of the Iraqi witnesses. (Encl. 1)

e. On 10 December 2007, the Iraqi witnesses, with the exception of Drs. Ayad and Waleed, declined to travel to the United States for the court proceedings for the Accused, citing safety concerns for themselves and their families. (Encl. 14)

f. On 12 December 2007, the CDA ordered a site visit and depositions of the Iraqi witnesses. (Encl. 2)

g. The charges against the Accused (after significant modifications) were referred to a General Court-Martial on 28 December 2007.

h. On 30 January 2008, the CDA declined to rescind his order for videotaped depositions of the Iraqi witnesses. The Defense counsel was given the opportunity to participate in the site visit and depositions. (Encl. 3)

i. On 1 February 2008, the military judge denied the defense request to stay the depositions. (Encl. 4)

j. Videotaped depositions of the seven Iraqi witnesses took place 21-22 February 2008 in Haditha, Iraq. Col Kathleen Henderson was appointed as the deposition officer, a court reporter, and an interpreter were present at all of the depositions were simultaneously transcribed as referenced by Col Henderson in Enclosure 6. The Accused waived his presence at the depositions of Iman, Abid, and Safah, but was present at the deposition of Mr. Al-Anzi. His detailed defense counsel was present at all of the depositions.

k. No service of process exists where this Court has authority or jurisdiction to compel the attendance of these deposed Iraqi witnesses at trial in the United States.

3. <u>Discussion.</u>

a. <u>The Videotaped Evidence Depositions In This Case Are Admissible.</u>

Mil.R.Evid. (MRE) 801 & 802 provide that out of court statements offered to prove the truth of the matter asserted, or hearsay, are not admissible at trial, subject to certain exceptions in the law.

MRE 804(b)(1) provides that former testimony of a witness is a hearsay exception where the testimony was taken under oath at another hearing of the same proceeding and where the witness was subjected to direct and cross examination. MRE 804(b)(1). Under UCMJ Art 49, Depositions are included in the definition of former testimony.

UCMJ Article 49(d) provides:

> A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence, or in the case of the audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears:

> (1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;
> (2) that the witness by reason of death, age sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable to or refuses to appear and testify in person at the place of trial or hearing; or
> (3) that the present whereabouts of the witness is unknown.

In *Crawford v. Washington*, the Supreme Court held that "[t]estimonial statements of witnesses absent from trial" are admissible "only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine [the witness]," *United States v. Cabrera-Frattini*, 65 M.J. 241, 242 (C.A.A.F. 2007). For testimonial statements to be admissible, "the accused must be afforded a prior opportunity cross-examine the witness," and "the witness must be unavailable." *Cabrera-Frattini*, at 245.

MRE 804(a) defines a witness as being unavailable when the witness:

> (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
> (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court do so; or
> (3) testifies to a lack of memory of the subject matter of the declarant's statement;
> (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
> (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable mean; or
> (6) is unavailable within the meaning of Article 49(d)(2).

A good faith effort is required of the government first before a witness is "unavailable" for purposes of the Sixth Amendment. *Cabrera-Frattini*, at 245; citing *Barber v. Page*, 390 U.S. 719, 724-25, 88 S.Ct. 1318, 20 L. Ed. 2d 255 (1968). The test for determining if a good faith effort was made is determined by considered all the circumstances under a

reasonableness standard. *Cabrera-Frattini*, at 245-246, citing *Cook v. McKune*, 323 F.3d 825, 835 (10th Cir. 2003). The test for unavailability focuses on "whether the witness is not present in the court in spite of good-faith efforts by the Government to locate and present the witness." *Cabrera-Frattini*, at 245-246, citing *Cokeley*, 22 M.J. at 228. "Courts are not without guidance in undertaking this fact-and-circumstance driven inquiry." *Cabrera-Frattini*, at 245-6. "This Court has addressed some factors that should be considered to determine unavailability, including the importance of the testimony, the amount of delay necessary to obtain the in-court testimony, the trustworthiness of the alternative to live testimony, the nature and extent of earlier cross-examination, the prompt administration of justice, and any special circumstances militating for or against delay." Id.

The Trial Counsel does not have authority to subpoena Iraqi Nationals to attend trial in the United States. No existing agreements exist that may compel Iraqi witnesses attendance at U.S. Courts-Martial. The Iraqi witnesses stated in a 10 December 2007 affidavit that they would cooperate in taking deposition testimony, so long as it took place in Haditha, Iraq but, that they are unwilling to testify in Courts-Martial in the United States due to personal safety and safety concerns of their family based on the nature of the charges in this case. (Encl. 14). Furthermore, they cannot be compelled to attend or even be subpoenaed. Thus, the Iraqi National witnesses should be declared unavailable.

Finally, the trial will be located at Camp Pendleton, which is more than one hundred miles away from where the unavailable Iraqi witnesses live. Under UCMJ Article 49, the depositions of these unavailable witnesses are admissible since the

witnesses are more than one hundred miles away and refuse to travel to the United States to testify at the court martial. In addition, the defense received reasonable notice of the videotaped evidence depositions and at least one member of the defense team, and/or the accused attended each deposition, they had the opportunity to, and did in fact, cross-examine the deposed witnesses.

b. The Evidence Is Relevant Under MRE 401 And 402.

Evidence is relevant if it tends to make the existence of a consequential fact more or less probable than it would be without the evidence. MRE 402. All relevant evidence is generally admissible. MRE 402. The government bears the burden of proving that evidence, documentary or real, is relevant to the offenses charged. *See United States v. Parker*, 10 M.J. 415, 416 (C.M.A. 1981).

Three of the deponents are eyewitnesses who survived the attack, specifically, two children from House 1 (Abid Al Rahman Waleed Al-Hameed and Iman Waleed Abd Al-Hameed) and one child from House 2 (Safah Yunis Salim Rasif). The depositions of these percipient witnesses are highly relevant to prove Charge I, specification 1 (all); Charge I, specification 3 (Safah); Charge II, specifications 1-8 (Safah); Charge III, specifications 1 (Iman and Abid) and 2 (Safah); and Charge IV, specifications 1 (Iman and Abid) and 2 (Safah).

Iman, who was approximately eleven years old on 19 November 2005, testified that after an explosion outside, two people entered from the living room doorway (in House 1), fired shots, and threw a "bomb" (presumably, a grenade), wounding her and her brother and killing six of her family members. She personally saw her grandfather, her mother, and two of her uncles shot. (Encl. 7, at 35-47) She stated that no one in her

family or in her house had a weapon. (Id., at 38, 54, 55) At one point, there were four or five Americans in the room. (Id., at 43) She stated that it was not smoky and that things in the room were visible. (Id., at 61) She testified that she then went to her neighbor's house and they were all dead, too. She identified her deceased mother, brother, and uncle, and her location in the room in Photograph 0078. (Id., at 62)

Abid, an approximately nine year-old boy on 19 November 2005, testified that an explosion outside his house (House 1) woke him up (Encl. 9, at 77) and that two Americans fired shots into the room he was in and threw a "sound bomb." (Id., at 76-77, 79) He said that Americans had previously taken his family's weapon. (Id., at 84-85)

Safah, an approximately 12-year-old girl on 19 November 2005, testified that she was woken by the sound of the IED. (Encl. 11, at 100) Her family gathered in one room (in House 2) and there was a knock at the door. As her father went to answer it, she heard shots fired. (Id., at 103) She testified that, through the open door, she saw "American forces" wearing MARPAT cammies ("the same uniform as [the interpreter]"). (Id., at 104) She said that they threw a grenade in the bedroom but it did not go off. (Id., at 105) She heard her aunt scream and then the "American forces" started shooting, so she slid between the wall and the bed. (Id., at 108-109) She saw one person enter the room and fire a weapon, then she fainted. (Id., at 116) When she woke up, she saw that the rest of her family was dead. (Id., at 117-118) She stated that no one in her house possessed a weapon. (Id., at 124) The witness identified the deceased individuals in photos 0087-0089 and 0093. (Id., at 125-127)

Khalid Salman Rasif Hussayn Al-Anzi also identified victims in Charge I. His videotaped testimony will assist the Government in proving the deaths of the named

victims in Charge II, specifications 1-8. Mr. Al-Anzi lives about 300 meters from House 1 and House 2, and his aunt's family was killed in House 1 and his cousin's family was killed in House 2. (Encl. 13, at 148-150) He identified 15 family members at the morgue who had been brought there from House 1 and House 2. (Id., at 155-156)

4. <u>Evidence and Burden of Proof.</u>

a. Pursuant to R.C.M. 905(c), the burden of proof is a preponderance of the evidence, and is assigned to the government as the moving party.

b. Evidence to be offered:

i. Enclosure 1 – Request for Site Visit and Videotaped Evidence Depositions dtd 26 Nov 2007

ii. Enclosure 2 – CDA Endorsement of Site Visit and Videotaped Evidence Depositions dtd 12 Dec 2007

iii. Enclosure 3 – CDA Response to Defense Request that the CDA Rescind the Order for Depositions of Iraqi Witnesses dtd 30 Jan 2008

iv. Enclosure 4 – Transcript of 39(a) Session of 1 Feb 2008 (Military judge's ruling, pp. 24-30)

v. Enclosure 5 - Authentication of Deposition Transcripts dtd 20 Mar 2008

vii.. Enclosure 6 – Video Deposition of Iman Waleed Abd Al-Hameed.

viii. Enclosure 7 – Transcription of Video Deposition of Iman Waleed Abd Al-Hameed

vix. Enclosure 8 – Video Deposition of Abid Al Rahman Waleed Al-Hameed

vx. Enclosure 9 – Transcription of Video Deposition of Abid Al Rahman Waleed Al-Hameed

x. Enclosure 10 – Video Deposition of Safah Yunis Salim Rasif

xi. Enclosure 11 – Transcription of Video Deposition of Safah Yunis Salim Rasif

xii. Enclosure 12 – Video Deposition of Khalid Salman Rasif Hussayn Al-Anzi

xiii. Enclosure 13 – Transcription of Video Deposition of Khalid Salman Rasif Hussayn Al-Anzi

xiv. Enclosure 14 – Affidavits of witnesses from Enclosures 7-14 of inability and/or unwillingness to appear at Courts-Martial in the United States.

5. <u>Relief Requested.</u>

Pursuant to R.C.M.(b)(13), the Government respectfully requests the Court to make a preliminary determination on the admissibility of the Depositions.

6. <u>Argument.</u>

The government respectfully requests oral argument.

J. G. Van Norman
Capt, U.S. Marine Corps
Assistant Trial Counsel

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Certificate of Service

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel by electronic mail on 2 August 2010.

Jessica Van Norman

J. G. Van Norman
Capt, U.S. Marine Corps
Assistant Trial Counsel

UNITED STATES MARINE CORPS
Legal Services Support Team C
U.S. Marine Corps Forces, Central Command
Box 555607
Camp Pendleton, California 92055-5607

IN REPLY REFER TO:
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NOV 26 2007

From: Trial Counsel
To: Commander, U.S. Marine Corps Forces, Central Command
Via: Staff Judge Advocate

Subj: REQUEST FOR SITE VISIT AND VIDEOTAPED EVIDENCE DEPOSITIONS IN THE CASE OF U.S. V. STAFF SERGEANT FRANK D. WUTERICH, USMC AND U.S. V. LANCE CORPORAL STEPHEN B. TATUM, USMC

Ref: (a) R.C.M. 702

1. In accordance with the reference, it is requested that the Commander, U.S. Marine Corps Forces, Central Command, as the Consolidated Disposition Authority (CDA) in the subject cases, authorize a site visit to Haditha, Iraq for the government and defense counsel. Government and defense counsel should be authorized a site visit in order to conduct witness interviews of the relevant Iraqi witnesses and to visually inspect the situs of the alleged offenses identified as House 1, House 2 and the roadside area identified as the intersection of routes Chestnut and Viper. The government and defense counsel should be authorized travel to and from Haditha, Iraq. Furthermore, the defense counsel should be authorized administrative support personnel to include all members of the defense team: the accused, two military counsel, two civilian counsel, one enlisted clerk, one translator, and one forensic crime scene reconstruction expert. The prosecution should be authorized travel to and from Haditha, Iraq for two trial counsel, one enlisted clerk, one translator and one forensic crime scene reconstruction expert.

2. The requested site visit is necessary in the interests of justice. The subject cases involve the personal observations of several Iraqi witnesses. Several of these witnesses continue to reside in Haditha, Iraq and have previously indicated they would not travel to the U.S. to testify at trial due to concerns for their personal safety and the safety of their immediate family members. These Iraqi witnesses have previously indicated that they would cooperate fully with the instant investigation and would consent to personal interviews and provide evidence depositions if the government and defense counsel were authorized to travel to Haditha, Iraq.

ENCLOSURE (1)

3. In accordance with the rationale set forth in paragraph 2, it is requested that the CDA, in conjunction with the site visit, order videotaped, court reported, oral evidence depositions be taken of the following witnesses:

a. Abid Al Rahman Waleed Al-Hameed
b. Eman Waleed Abd Al-Hameed
c. Khalid Salman Rasif Hussayn Al-Anzi
d. Safah Yunis Salim Rasif
e. Waleed Abd Al-Khaliq Abd Al-Fatah Ahmad
f. Ayad Ghazi Musleh Mushawwah Al-Anzy
g. Jameel Mahmood Aashoor Lateef
h. Shams Al Deem Dawwud Mohammed Khalil
i. Hiba Abdullah Abid Hussein

4. The following information is provided in accordance with subparagraph (c)(2) of the reference:

a. Abid Al Rahman Waleed Al-Hameed

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of six (6) of his family members in House 1 on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to his knowledge relating to the allegations of Charge III in the case of U.S. v. Lance Corporal Stephen B. Tatum, USMC and the named victims in the case of U.S. v. Staff Sergeant Frank D. Wuterich, USMC.

(3) Rationale for taking the deposition: The witness is an 8 year old Iraqi male who lives in Haditha, Iraq and will not travel to the U.S. to testify at subject general courts-martial. The representative for this witness, Khalid Salman Rasif Hussayn Al-Anzi, indicated the witness would cooperate in the taking of the deposition if conducted in Haditha, Iraq.

b. Eman Waleed Abd Al-Hameed

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: Her knowledge of the facts and circumstances relating to the deaths of six (6) of her family members in House 1 on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to her knowledge relating to the allegations of Charge III in the case of U.S. v. Lance

Corporal Stephen B. Tatum, USMC and the named victims in the case of U.S. v. Staff Sergeant Frank D. Wuterich, USMC.

(3) Rationale for taking the deposition: The witness is a 10 year old Iraqi female who lives in Haditha, Iraq and will not travel to the U.S. to testify at subject General Courts-Martial. The representative for this witness, Khalid Salman Rasif Hussayn Al-Anzi, indicated the witness would cooperate in the taking of the deposition if conducted in Haditha, Iraq.

c. Khalid Salman Rasif Hussayn Al-Anzi

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of approximately twenty-four (24) Iraqi citizens on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to his knowledge relating to the identity of victims named in Charge I in the case of U.S. v. Lance Corporal Stephen B. Tatum, USMC and the named victims in the case of U.S. v. Staff Sergeant Frank D. Wuterich, USMC.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has indicated a willingness to travel to the U.S., however taking the deposition would be a safeguard in the event he declines at time of trial to travel to the U.S. in order to testify at the subject general courts-martial.

d. Safah Yunis Salim Rasif

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of eight (8) of her family members in House 2 on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to her knowledge relating to the allegations of Charge I, Specifications 1 and 2 in the case of U.S. v. Lance Corporal Stephen B. Tatum, USMC.

(3) Rationale for taking the deposition: The witness is a 15 year old Iraqi female who lives in Haditha, Iraq and has previously indicated that she will not travel to the U.S. to testify at subject General Courts-Martial. The representative for this witness, Khalid Salman Rasif Hussayn Al-Anzi, indicated

the witness would cooperate in the taking of the deposition if conducted in Haditha, Iraq.

e. Waleed Abd Al-Khaliq Abd Al-Fatah Ahmad

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of approximately twenty-four (24) Iraqi citizens on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to establishing the identity of victims in Charge I.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has indicated a willingness to travel to the U.S., however taking the deposition would be a safeguard in the event he declines at time of trial to travel to the U.S. in order to testify at the subject general courts-martial.

f. Ayad Ghazi Musleh Mushawwah Al-Anzy

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of approximately twenty-four (24) Iraqi citizens on or about 19 November 2005 in Haditha, Iraq.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has indicated a willingness to travel to the U.S., however taking the deposition would be a safeguard in the event he declines at time of trial to travel to the U.S. in order to testify at the subject General Courts-Martial.

g. Jameel Mahmood Aashoor Lateef

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of approximately twenty-four (24) Iraqi citizens on or about 19 November 2005 in Haditha, Iraq. The witness was a male nurse on duty at the Haditha Hospital when the 24 Iraqi citizens were brought to the morgue.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has declined to travel to the U.S. to testify at the subject general gourts-martial. The representative for this witness, Khalid Salman Rasif Hussayn Al-Anzi, indicated the witness would cooperate in the taking of the deposition if conducted in Haditha, Iraq.

h. Shams Al Deem Dawwud Mohammed Khalil

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: His knowledge of the facts and circumstances relating to the deaths of approximately twenty-four (24) Iraqi citizens on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to his knowledge relating to the allegations of Charge I.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has declined to travel to the U.S. to testify at the subject general courts-martial. The representative for this witness, Khalid Salman Rasif Hussayn Al-Anzi, indicated the witness would cooperate in the taking of the deposition if conducted in Haditha, Iraq.

i. Hiba Abdullah Abid Hussein

(1) Address: Haditha, Iraq

(2) Matters on which the witness is to be examined: Her knowledge of the facts and circumstances relating to the deaths of six (6) of her family members in House 1 on or about 19 November 2005 in Haditha, Iraq. Furthermore, the subject deponent will be examined with regard to her knowledge relating to the allegations of Charge III in the case of U.S. v. Lance Corporal Stephen B. Tatum, USMC and the named victims in the case of U.S. v. Staff Sergeant Frank D. Wuterich, USMC.

(3) Rationale for taking the deposition: The witness currently resides in Haditha, Iraq. The witness has declined to travel to the U.S. to testify at the subject general courts-martial.

5. Point of contact for this request is LtCol Sean M. Sullivan, USMCR, Senior Trial Counsel, commercial (760)763-9904, DSN 361-9904 or email sean.sullivan@usmc.mil.

S. M. Sullivan

S. M. SULLIVAN
Lieutenant Colonel, USMCR

UNITED STATES MARINE CORPS
U.S. MARINE CORPS FORCES CENTRAL COMMAND
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIRFORCE BASE, FLORIDA 33621-5101

IN REPLY REFER TO
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SJA

12 DEC 2007

SECOND ENDORSEMENT on LtCol Sullivan's ltr 5810 LSST-C dtd 26 Nov 07

From: Commander, U.S. Marine Corps Forces, Central Command
To: Lieutenant Colonel S. Sullivan, Trial Counsel

Subj: REQUEST FOR SITE VISIT AND VIDEOTAPED EVIDENCE DEPOSITIONS IN THE CASE OF U.S. V. STAFF SERGEANT FRANK D. WUTERICH, USMC AND U.S. V. LANCE CORPORAL STEPHEN B. TATUM, USMC

1. Returned, partially denied and partially approved.

2. I have carefully considered your request and the recommendation of the Acting Staff Judge Advocate. I have also considered the tactical environment in Haditha. Great deference must be given to the battle rhythm and the commanders in charge of that battle space when coordinating the depositions and visits, to include overall security and transportation of the teams and witnesses. All parties must accommodate the operational tempo of AO Denver, as well as agree in writing not to disclose the visits and depositions beforehand to any third parties (persons other than counsel, witnesses and supporting personnel designated by MARCENT) until all members of each of these teams have safely returned to CONUS.

3. You have requested two trial counsel, all members of the defense teams (two military counsel each, two-three civilian counsel each, plus each accused), one enlisted clerk to be shared among the defense teams, one enlisted clerk for the trial team, one translator per defense and trial team, and one forensic expert per defense and trial team.

a. So much of this request is approved as to allow each party up to three (3) legal counsel to attend the site visits. You have failed to articulate the necessity of entire defense teams with an indeterminate number of members to travel on the site visits. Moreover, Rule for Court-Martial 506 provides an accused's representation by civilian counsel will be at no expense to the U.S. Government. While each defense team is free to select the composition of its three counsel (military counsel, civilian counsel, or both), all costs and expenses of civilian counsel, if any, regarding these site visits will be at no expense to the U.S. Government. Any counsel desiring to renew or make a separate request should submit written justification of the necessity for the request.

ENCLOSURE (2)

Subj: REQUEST FOR SITE VISIT AND VIDEOTAPED EVIDENCE DEPOSITIONS IN THE CASE OF U.S. V. STAFF SERGEANT FRANK D. WUTERICH, USMC AND U.S. V. LANCE CORPORAL STEPHEN B. TATUM, USMC

b. Your request that each accused be allowed to accompany his respective defense team is approved.

c. Your request for one enlisted clerk to be shared among the defense teams and one enlisted clerk for the trial team is approved.

d. Your request for one forensic expert per defense and trial team to attend the site visits is approved. I previously granted Lance Corporal Tatum's defense team's request to retain a defense investigator. If that, or any team, requests the presence of its retained investigator at the site visits, that request is also approved. If that defense investigator is a civilian, the investigators costs and expenses shall be at no cost to the U.S. Government.

e. Your request for one Arabic translator per defense and trial team is approved. There is a pre-existing contract for translator support which can be coordinated in conjunction with the preparations for this site visit.

4. You have requested to visit the roadside area at the intersection of routes Chestnut and Viper, as well as the locations of the shootings identified as Houses 1 & 2. These locations fall within areas with ongoing military operations. Therefore, unfettered site access cannot be guaranteed. Subject to security considerations, ongoing military operations within the area and the area commander's ability to support the requested site visits, your request to visit locations within Haditha is approved.

5. You have requested the opportunity to depose nine witnesses (take and preserve their testimony for use at court-martial consistent with R.C.M. 702) who are Iraqi nationals IVO Haditha, Iraq, it appearing that most, if not all, of the deponents fear for their safety and are unwilling to come to the United States. Due to these exceptional circumstances, I believe it likely these prospective witnesses will be unavailable at the time of trial. The U.S. Government has no control over whether Iraqi nationals will submit to interviews or depositions. Depending upon the timing of the actual depositions, there is no guarantee even a "willing" witness will be on hand or otherwise available for deposition. Rule for Court-Martial 701 only provides that a party is merely entitled to an "equal opportunity to interview witnesses and inspect evidence." The site visits within Haditha will accomplish that. Subject to witness availability for and amenability to deposition, as well as the security and operational considerations and the area commander's ability to

Subj: REQUEST FOR SITE VISIT AND VIDEOTAPED EVIDENCE DEPOSITIONS IN THE CASE OF U.S. V. STAFF SERGEANT FRANK D. WUTERICH, USMC AND U.S. V. LANCE CORPORAL STEPHEN B. TATUM, USMC

support, your request to take evidentiary depositions pursuant to reference (a) is approved.

6. Although there is no request for equipment, no showing of necessity and no requirement that the Government issue any equipment, four (4) digital cameras and two (2) digital video recorders with sound capability will be made available for the defense teams' collective use and one of each will be made available to the trial team. I will also approve the issuance of weapons and ammunition to military members attending the site visits for their personal protection while in theater and Personal Protective Equipment for all persons attending the site visits. I want to make it clear, however, that despite my determinations regarding your requests, that I have not received the Article 34 advice letter regarding Staff Sergeant Wuterich's case and I have therefore not made a decision whether to refer his case to court-martial.

7. You are advised to coordinate the details and logistics of the approved portions of this request with CWO3 Wesley Wagner, who may be reached at (760)725-8780.

S. T. HELLAND

UNITED STATES MARINE CORPS
U.S. MARINE CORPS FORCES CENTRAL COMMAND
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIRFORCE BASE, FLORIDA 33621-5101

IN REPLY REFER TO:
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JAN 3 0 2008

CONFIDENTIAL - FOR ATTORNEY EYES ONLY

VIA FEDERAL EXPRESS
Neal A. Puckett, Esq.
Attorney at Law
2181 Jamieson Ave, Suite 1505
Alexandria, VA 22314

Re: Haditha Site Visit and Depositions correspondence of 25JAN08 wrt United States v. SSgt Frank D. Wuterich, USMC

Dear Mr. Puckett:

I have carefully reviewed and considered your request that I rescind my 12 December 2007 Order for Videotaped Evidence Depositions of the designated witnesses residing in Haditha, Iraq. My rationale for ordering the videotaped evidence depositions was to provide maximum opportunity for both parties to obtain greater access to witnesses and evidence.

You can rest assured that I am determined to avoid putting Marines at risk unnecessarily. I am confident that U.S. Marine Corps personnel will be able to provide secure transportation for all parties, including SSgt Wuterich and his defense counsel, to and from the location of the depositions. I am also confident that the Marine Corps unit currently assigned to the Haditha area of operations will be able to provide a safe and secure location for the conduct of the subject depositions, ensuring that all parties who wish to voluntarily participate in the questioning of these witnesses have the opportunity to memorialize any important information for possible future use at trial.

I have also reviewed your suggestion that the Iraqi witnesses might testify at SSgt Wuterich's upcoming court-martial via video teleconference (VTC). Based on your reported willingness to waive objection to that means of obtaining their testimony, I directed my SJA to explore its merits. The proposal, however, postpones rather than resolves the issue of the availability of the Iraqi witnesses and does not, therefore, obviate the need for the depositions.

Accordingly, your request that I rescind my order is denied. I believe the interests of justice are better served by providing maximum opportunity for both parties to obtain access to witnesses and evidence. In this regard, I encourage your team and your client to take advantage of this opportunity.

Sincerely,

SAMUEL T. HELLAND
Lieutenant General, U.S. Marine Corps
Commander
U.S. Marine Corps Forces,
Central Command

Copy to:
Trial Counsel

ENCLOSURE (3)

UNITED STATES MARINE CORPS
U.S. MARINE CORPS FORCES CENTRAL COMMAND
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIRFORCE BASE, FLORIDA 33621-5101

5800
SJA

SECOND ENDORSEMENT on Neal Puckett's request dtd 25 Jan 08 to rescind order for site visit and depositions ICO U.S. v. Staff Sergeant Frank D. Wuterich, USMC

From: Staff Judge Advocate, U.S. Marine Corps Forces, Central Command
To: Commander, U.S. Marine Corps Forces, Central Command

Subj: DEPOSITIONS OF IRAQI WITNESSES ICO UNITED STATES V. STAFF SERGEANT FRANK D. WUTERICH USMC

1. Forwarded, recommending denial.

2. Mr. Neal Puckett, the lead civilian defense counsel for Staff Sergeant Wuterich, requests that you rescind your order to depose Iraqi witnesses. He argues the depositions will conflict with pretrial motion hearings scheduled for 13-15 February and 20-22 February. The Government has stated that it is willing to continue the depositions to on or about 28 February to avoid any such conflict.

3. Civilian counsel has indicated his client cannot afford to send him to attend the site visit and depositions. Under the Rules for Courts-Martial, civilian counsel represent an accused at no expense to the United States. Staff Sergeant Wuterich's two military counsel are provided at no expense to him and may travel to attend these critical depositions at no cost to the accused.

4. Civilian counsel has also raised concerns about personal safety, both for himself and his client. Under United Nations Security Council Resolution 1790, U.S. personnel remain immune from Iraqi criminal jurisdiction. Personnel will travel via secure transport, and the witnesses will be deposed in the secure firmbase at Haditha Dam, where every precaution is being taken.

5. Counsel has also raised the issue of alternatives to deposition testimony. There is no guarantee that the witnesses will be available either now or at trial. These video-taped depositions are the only legally sufficient method to preserve this evidence. The availability of video-teleconference testimony at trial, with few exceptions inapplicable here, is not recognized as legally acceptable in the military justice system.

6. I recommend you deny civilian counsel's request to rescind your order. I have prepared appropriate correspondence to that effect should you concur.

G. W. RIGGS

UNITED STATES MARINE CORPS
LEGAL SERVICES SUPPORT TEAM C
MARINE CORPS FORCES CENTRAL COMMAND
BOX 555607
CAMP PENDLETON, CALIFORNIA 92055-5607

IN REPLY REFER TO:
5800
LSST-C/dje

JAN 29 2008

From: Trial Counsel
To: Staff Judge Advocate, Marine Corps Forces Central Command

Subj: DEPOSITIONS OF IRAQI WITNESSES ICO UNITED STATES V. STAFF SERGEANT FRANK D. WUTERICH USMC

Ref: (a) Neal A. Puckett ltr dtd 25 Jan 08

Encl: (1) Email btw Civ DC)/Maj Erickson (LSST-C) 28 Jan 08

1. Reference (a) is a letter from the lead civilian defense counsel representing Staff Sergeant Wuterich to the Consolidated Disposition Authority (CDA), regarding his order to conduct depositions of Iraqi witnesses in Haditha, Iraq. In his letter, civilian defense counsel requests that the CDA rescind his order to conduct depositions.

2. Civilian defense counsel argues that the accused and his defense counsel cannot participate in the depositions because the depositions conflict with a previously scheduled court session. The Government has noted this objection and will communicate to defense counsel the Government's willingness to continue the depositions to on or about 28 February 2008 in order to permit the accused and his defense counsel to attend the previously scheduled Article 39(a) session and then travel to Iraq in order to participate in the subject depositions.

3. Civilian defense counsel also indicated in his letter that the accused and his defense counsel would not participate in the depositions because the accused cannot afford to send his civilian defense counsel to Iraq. It should be noted that the accused is also represented by two experienced military defense counsel who will be flown to Iraq at no cost to the accused in order to be provided the accused an opportunity to question the Iraqi witnesses and memorialize their testimony for use at trial.

4. The accused, through civilian defense counsel, has also raised concerns with regard to his personal safety if he were to return to Haditha, Iraq. The accused, if he elects to voluntarily participate in these depositions, will travel at no cost to himself by secure military transport to Iraq, stopping only at secure U.S. military bases. The depositions are scheduled to take place in Haditha, Iraq at a Forward Operating Base secured by a battalion of U.S. Marines.

5. The accused has also raised concerns that the Iraqi authorities will arrest him once he is in Iraq. Again, the accused will be under

Subj: DEPOSITIONS OF IRAQI WITNESSES ICO UNITED STATES V. STAFF SERGEANT FRANK D. WUTERICH USMC

the protection of the U.S. Marine Corps during this entire evolution and will only be traveling via secure U.S. military transport and stopping at secure U.S. military bases. The subject videotaped evidence depositions will be taken at a location and in a manner consistent with ensuring the security of all parties involved during the entire time period required to complete these depositions.

6. Regardless of whether the CDA rescinds his deposition order, per the enclosure, civilian defense counsel has indicated that neither the accused nor his defense counsel will participate in the ordered depositions. However, as an alternative, civilian defense counsel has stated in the enclosure that the accused and defense counsel will not object to relevant Iraqi witnesses testifying via video teleconferencing (VTC).

7. The Government counsel must depose the subject witnesses in order to memorialize their testimony in case they become unavailable for testimony via VTC or some other agreed upon method at trial. The Government is offering the accused and defense counsel the opportunity to voluntarily participate in these depositions in order to ensure they also have the opportunity to memorialize any relevant and material evidence they may wish to present at trial.

8. The government respectfully requests that the CDA deny defense counsel's request to rescind his deposition order in this matter.

D. J. ERICKSON
Major, USMC

Copy to:
Defense Counsel
File

Neal A. Puckett

Lieutenant Colonel, USMC (Ret)
Attorney at Law

25 January 2008

Lieutenant General Samuel T. Helland, USMC
Commander
Marine Corps Forces Central Command
7115 South Boundary Boulevard
MacDill AFB, FL 33621

Re: *United States v. SSgt Frank D. Wuterich, USMC*

Dear LtGen Helland,

We are civilian counsel representing SSgt Frank Wuterich, USMC, and write on behalf of his legal team asking you to rescind your order to depose Iraqi witnesses. After having had this case for a significant period of time the prosecutors have suddenly scheduled a series of depositions to commence on 21 February 2008 in Haditha, Iraq, less than two weeks before our scheduled trial date of 3 March 2008.

Beyond the significant legal deficiencies of this notice, SSgt Wuterich and his attorneys, as a practical matter, will be unable to attend any deposition as currently scheduled. Prior to that date, anti-terrorism force protection training and travel to the region will be required up to one week or more. However, and more importantly, we are scheduled by court order of the military judge (issued after being agreed to by the prosecution) to attend pretrial motion hearings during 13 – 15 February 2008 and 20 – 22 February 2008. SSgt Wuterich is entitled to have all of his attorneys present during each scheduled session of court, and the proposed deposition schedule will absolutely not permit our attendance at any deposition in Iraq.

Even if the Wuterich defense team had been given sufficient, timely notice that did not conflict with the court schedule, SSgt Wuterich cannot afford to send his two lead civilian counsels to Iraq to conduct such depositions. We understand that the prosecution requested funding for civilian counsel to personally attend the depositions, but that you denied that request. As a result it is simply not financially feasible for SSgt Wuterich to have representation in Iraq from his counsel of choice.

Additionally, the Wuterich defense team cannot safely enter the town of Haditha given the foreknowledge by insurgents, which must be assumed to exist as a byproduct of the prosecutors' preparations. It defies common sense that the United States Marine Corps would require SSgt Wuterich and his defense team to journey to Haditha, Iraq. SSgt Wuterich and everyone associated with him will be clear targets of the insurgency, particularly in light of the intense pretrial publicity that has existed for more than two years portraying him and his men as having committed the massacre of innocent Iraqi

2181 Jamieson Ave, Suite 1505 - Alexandria, Virginia 22314 - 202-340-0069
napuckett@comcast.net www.militaryjudges.com

women and children. It is ironic that the purported Iraq witnesses will allegedly not travel to the safe confines of the United States to testify because of some imagined, unarticulated, danger but will instead allegedly freely participate in U.S. military proceedings held in Iraq. If there is any actual danger surrounding such an exercise, it would be to SSgt Wuterich if he were to arrive in the same town where he has been vilified by insurgents and the local populace.

We have an additional concern regarding taking our client to Iraq, assuming the aforementioned hurdles can be overcome. As far as we know, there is nothing to prevent Iraqi authorities from arresting SSgt Wuterich in order to charge him and place him on trial in the Iraqi criminal justice system. It is our client's desire to attend, but the very real threat of the exercise of Iraqi criminal jurisdiction prevents him from being able to participate, thereby denying him his constitutional rights of confrontation.

In actuality, there is no legitimate reason why Iraqi witnesses, who have purportedly agreed to present themselves for questioning and participation in U.S. court-martial proceedings, could not do so in front of a video camera as part of a VTC process that is now widely used. SSgt Wuterich's panel of members would then be able not only to see and hear the Iraqi responses to direct and cross examination questions, but they would also be able to pose their own questions, as our military justice process permits. In light of this undisputed fact, we respectfully wonder why you have not demanded an explanation from your SJA as to why this procedure cannot or will not be used.

Finally, for whatever reasons, your SJA has put you in a very unfortunate and legally untenable position by having you order these depositions which place Marines at risk. We believe it is time to reevaluate that position and rescind the order. It is an unreasonable denial of SSgt Wuterich's right to confront witnesses against him in court, either in person or via available video teleconference technology. No such effort has even been suggested, much less planned, by Marine Corps prosecutors. In a choice between ensuring maximum physical and legal protection for your Marines in harm's way, (either in combat or in a court-martial), and contorting the military justice process to accommodate the imagined inconvenience of Iraqi witnesses who have already demonstrated mendacity and political purpose, which would you choose, General? When the final chapter on Haditha is written, Sir, I'm sure you will be remembered for going the extra mile to ensure your Marines had the benefit of full legal protection. We respectfully request that you rescind your deposition order and direct your prosecutors to arrange for VTC testimony of any and all witnesses they deem necessary.

Respectfully requested,

Neal A. Puckett
Lead Civilian Counsel

Mark S. Zaid
Civilian Counsel

The Article 39(a) session recessed at 1110, 1 February 2008.

The Article 39(a) session was called to order at 1257, 1 February 2008.

MJ: This court is called to order. All parties present when the court last recessed are again present.

On the current case, the accused is before the court on charges of voluntary manslaughter and other offenses related to the death of Iraqi nationals in Haditha, Iraq, on or about the 19th of November of 2005.

After referral of charges, the accused was formally notified of the government's intention to conduct depositions of Iraqi witnesses in Iraq, based on their potential declining to travel to the United States and the inability of the witnesses to be subjected to compulsory process.

The defense objected to the depositions, requesting instead that the witnesses testify at trial by video teleconference from Iraq. The depositions will conflict with the current trial schedule.

In resolving this particular issue, the court sees the issue as follows: Does the convening authority have the authority, under R.C.M. 702, to order a deposition in a foreign country to preserve the testimony of witnesses not subject to compulsory process and providing the opportunity for the accused and his counsel to be present when the depositions will impact on the current trial schedule, will place a financial burden on the accused, will require training and area clearances for both military and civilian counsel, and will subject all parties to the potential dangers of traveling in a combat zone during a high profile case.

In resolving this issue, the court makes the following findings of fact:

First, on 26 November 2007, the trial counsel requested the convening authority to authorize travel to Iraq for the trial counsels, members of the defense team, and the accused to conduct a site survey, and conduct videotaped depositions of Iraqi witnesses.

Two, on 5 December of 2007, the trial counsel provided

ENCLOSURE (4)

notice to the defense of anticipated travel to Iraq for a site visit. The government did not specifically mention depositions, but did provide notice of actions the defense would be required to accomplish to facilitate this trip. The charges in the current case were still pending referral.

On 10 December of 2007 -- this is three -- on 10 December 2007, the government, through Major David Cox, Battalion Judge Advocate for 3d Battalion, 24th Marines, located in Haditha, Iraq, received an affidavit from Khalid Salman Rasif Hussayn, an Iraqi apparently in a position to make such representations, that Iraqi witnesses in the subject case declined to travel to the United States, but would participate in oral depositions if taken in Iraq. The Iraqi witnesses are not subject to process to appear and testify in the United States.

Four, on 12 December of 2007, the convening authority authorized the requested travel to Iraq, as requested by the government. Although, declining to pay the cost of transportation of the civilian defense counsel from the United States to Kuwait. The defense was provided notice of this decision and was aware of the desire to conduct videotaped depositions.

Five, on 27 December of 2007, the charges currently before the court were preferred and the defense demanded -- made a demand for speedy trial. The accused is not in pretrial confinement, although he has been held past his current contract. The defense does not claim any issue as it relates to Rule for Court-Martial 707 or Article 10. These charges represent major modifications from the previous charges, including referral of voluntary manslaughter vice murder charges.

Six, on 28 December of 2007, the newly preferred charges were referred to this court-martial.

Seven, on 2 January 2007 [*sic*], the government provided further notice concerning the site visit, including documents indicating the requirements for traveling to Iraq.

Eight, on 7 December 2008 [*sic*], the staff judge advocate for the convening authority notified the civilian defense counsel by correspondence of the decision to order a site visit and deposition, and

requested from the defense their information concerning who would travel.

Nine, on 9 January 2008, the accused was arraigned and a trial schedule was established. This trial schedule did not take into account the already notified site visit to Iraq. The week of trial was subsequently shifted one week to accommodate the military judge's schedule and is set to commence on 3 March 2008. At the time of this arraignment, all parties were on notice of the intended site visit and depositions, except for the military judge.

Ten, on 15 January 2008, the defense requested the production of Iraqi witnesses for trial.

Eleven, on 18 January 2008, the accused was formally notified of the order to conduct depositions. The government also responded to the defense witness request, again noting the intent to conduct deposition.

Twelve, on 25 January 2008, Mr. Puckett submitted objections to the proposed depositions, citing a timing, financial security, and other concerns. He proposed taking testimony from Iraqi nationals using video teleconferencing during the course of the trial.

Thirteen, on 30 January 2008, the convening authority denied Mr. Puckett's request to revoke his deposition order.

Fourteen, the government proffers that all travel from Kuwait into the Iraqi theater of operations will be aboard sovereign U.S. military aircraft, that the accused will be kept aboard military bases under the control of the Multi-National Forces Iraqi, and not subjected to Iraqi process. The government further represents that military defense counsel traveling to Iraq will be required to submit to training and other requirements that will take approximately a week to accomplish.

The government further represents that it will take approximately two weeks for area clearance to be obtained for civilian defense counsel, who will be transported from Kuwait to the deposition site at military expense aboard military transport.

Fifteen, the subject case has been a matter of considerable media attention and has had international interest. A movie concerning the events, which may present the accused and this case in a negative light is currently being released overseas and may be pending release in the United States.

The statement of the law that applies to this particular case:

Rule for Court-Martial 702(a) states: A deposition may be ordered whenever, after preferral of charges due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a perspective witness be taken and preserved for use at an investigation under Article 32 or a court-martial.

Now, with respect to who may order a deposition after referral of charges, R.C.M. 702(b) states: That after referral, the convening authority or the military judge may order that a deposition be taken on request of a party. A deposition may be requested by any party and the form of the request for deposition must include the names and addresses of the persons sought to be deposed, a statement of the matters on which the person is to be examined, a statement of reasons for the deposition, and the nature of the deposition requested. The convening authority must grant the request unless good cause is shown. The convening authority must promptly respond to this request. Upon approval of the deposition, the convening authority is required to detail a deposition officer. The defense may lodge objections prior to this deposition.

Now, at an oral deposition, the accused has the right to be present unless, absent good cause shown, he fails to appear after notice of the time and place of the deposition. He further has the right to be represented by counsel under the conditions that are described under Rule for Court-Martial 506.

Now, in this subject case, the government requested and obtained approval of the depositions prior to referral of charges and provided timely notice to the defense that the deposition was intended and sought to prepare the defense for travel to Iraq. For reasons that are not clear to the court, this site visit was not addressed thoroughly at the time of the arraignment and

establishment of the trial schedule. The witnesses in this case are not subject to compulsory process and the conditions have been met, which indicate that this inability to compel attendance at trial represents exceptional circumstances required under this rule.

With respect to timing, it appears that the government has complied with the requirements of this rule. The proposed dates may impact on the current trial schedule, but adequate time exists to bring this case to trial prior to the retirement dates of the two military defense counsel. After preserving and presenting the testimony -- as the preserving and presenting of testimony of percipient witnesses to the alleged offense is in the interest of justice, the court is not inclined to interfere with a process necessary to preserve this evidence.

With respect to the financial burden of the accused, occasioned by travel of civilian counsel, the court merely notes that the accused has the right to be represented by civilian counsel at no expense to the United States. How this is to be accomplished is an issue personal to the accused. The accused is currently represented by three military attorneys, as well as his two civilian counsel.

With respect to the security concerns expressed by the defense. The government has made representations that they are taking actions to ensure and safeguard the security of all trial participants, including the accused, during the deposition process. The accused will be in the custody and protection of the United States Marine Corps during all phases of his transportation. The accused and counsel has the right to be present but do have the option to decline to attend. The government is required to ensure all military participants of the defense team are trained, inoculated, and transported to the site of the deposition, and to ensure the civilian counsel are transported from Kuwait to Iraq. The government is responsibility for the security of all involved. If the government provides all of this, then the government has complied with the procedures of Rule for Court-Martial 702.

Based on these, the court concludes that the depositions ordered by the convening authority are in compliance

with Rule for Court-Martial 702, and that the procedures put in place by the government to ensure the presence of the accused and counsel at the depositions appear to be appropriate. The court will not stay the ordered deposition and will in the interest of justice make appropriate modifications to the trial schedule to allow the depositions to be accomplished.

Counsel, do you have any questions concerning the court's ruling?

TC (Maj Erickson): None from the government, sir.

DC (LtCol Vokey): Sir, the last sentence you said, Your Honor.

MJ: The court will not stay the ordered deposition and will in the interest of justice make appropriate modifications to the trial schedule to allow their completion.

DC (LtCol Vokey): Yes, sir. And the defense's position is that we definitely do not want to delay the trial even by a day. I'm just thinking that we get over there for the deposition, it's ordered on that day, whatever reason the government can't get Iraq together or those folks don't show up. Do we wait a week or two, and that's definitely going to impact or delay the trial schedule.

MJ: I understand. These are all logistical concerns. However, at this point they're hypothetical as opposed to actual.

DC (LtCol Vokey): All right, sir. I guess the defense's position is the notice is for that day of the deposition that was provided, and not for an indeterminate amount of time after that.

MJ: Understood.

Okay. I understand what you're saying. Again, I don't have -- I don't have a issue that I can decide at this particular point.

Now, counsel, based on this, there may be a modification necessary for one or both of the motions session. Would you like to work that out between the two teams and propose those dates for me in writing?

Do you believe you will be able to do that?

TC (Maj Erickson): Sir, I think first we'd have to determine who from the defense is going forward --

MJ: Understand.

TC (Maj Erickson): -- if there is going to be a need to move those days.

MJ: What I'm saying is: I can referee this or you guys can work it out and then propose it to me. What would you like to do?

DC (LtCol Vokey): We don't want to move any of the trial dates at all, sir.

MJ: Okay.

TC (Maj Erickson): So I guess we'll work it out amongst ourselves and get back with you next week, sir, at an 802. I'll call all parties and arrange for an 802 to give you what we came up with.

MJ: Okay. That will work well then.

Is there any other issues that we need to take up at this point.

TC (Capt Gannon): Yes, Your Honor. With respect to the representative of *CBS News*. Is Your Honor going to be amenable to including -- proposing an 802 for next week, scheduling a conference to deal with that?

MJ: We'll need to do it next week. I will note next week that I am going to be unavailable during the first parts of the day. I'll be available after about 1500.

TC (Capt Gannon): Yes, sir.

MJ: Once you guys have worked out what impact, if any, this is going to have on the schedule, then we can have a rational conversation with the counsel from *CBS*.

TC (Capt Gannon): Thank you, sir.

MJ: Okay? Anything else that we need to take up at this time?

COLONEL KATHLEEN G. HENDERSON, USMC
I MEF (SJA)
UNIT 42540
FPO AP 96426-2540

Kathleen.Henderson@cf.mnf-wiraq.usmc.mil

21 Mar 08

From: Deposition Officer
To: Commander, U.S. Marine Corps Forces, Central Command (SJA)
Attn: LtCol Kumagi & LtCol Riggs

Subj: AUTHENTICATION OF DEPOSITION TRANSCRIPTS IN THE CASES OF UNITED STATES v. STAFF SERGEANT FRANK D. WUTERICH, USMC; UNITED STATES v. LANCE CORPORAL STEPHEN B. TATUM, USMC; AND UNITED STATES v. LIEUTENANT COLONEL J. R. CHESSANI, USMC

Encl: (1) Col Henderson ltr of 20 Mar 08, re: Authentication of Wuterich Deposition, w/ deposition transcript
(2) Col Henderson ltr of 20 Mar 08, re: Authentication of Tatum Deposition, w/ deposition transcript
(3) Col Henderson ltr of 20 Mar 08, re: Authentication of Chessani Deposition, w/ deposition transcript
(3) Deposition Exhibits

1. Enclosed are the depositions, exhibits and deposition officer's certifications in the above matters. As per my emails to you of yesterday and today, copies of these items are accessible through the MNF-W website, in the SJA-Investigations-Miscellaneous-Haditha section via password: cases.

K. G. Henderson
K. G. HENDERSON
Colonel, USMCR

ENCLOSURE (5)

COLONEL KATHLEEN G. HENDERSON, USMC
I MEF (SJA)
UNIT 42540
FPO AP 96426-2540

Kathleen.Henderson@cf.mnf-wiraq.usmc.mil

20 Mar 08

From: Deposition Officer
To: Commander, U.S. Marine Corps Forces, Central Command (SJA)

Subj: AUTHENTICATION OF DEPOSITION TRANSCRIPTS IN THE CASE OF UNITED STATES v. STAFF SERGEANT FRANK D. WUTERICH, USMC

Ref: (a) CDA Deposition Appointment Order 5810 SJA of 1 Feb 08
(b) Manual for Courts-Martial, United States (2005 Edition)
(c) CDA Appointment of Interpreter 5810 SJA of 11 Feb 08

Encl: (1) Deposition Transcript of Iman Waleed Abid Hameed
(2) Deposition Transcript of Abid Al Rahman Waleed Alu Hameed
(3) Deposition Transcript of Safah Yunis Salim Rasif
(4) Deposition Transcript of Khalid Salman Rasif Hussayn Al-Anzi
(5) Deposition Transcript of Ayad Ghazi Musleh Mushawwah Al-Anzi
(6) Deposition Transcript of Waleed Abdul Kalik Adbul Fatah Aman
(7) Deposition Transcript of Jameel Mahmood Aashoor

1. Reference (a) appointed Colonel K. G. Henderson, U.S. Marine Corps Reserve, to conduct videotaped evidence depositions of eight Iraqi witnesses located in Haditha, Iraq.

2. The videotaped evidence depositions of the Iraqis outlined in enclosures (1) through (7) took place 21-22 February 2008 in Haditha, Iraq. Each deposition was transcribed by SSgt W. J. Jordan, U.S. Marine Corps, a legal services court reporter, who has been previously sworn in accordance with Rule for Court-Martial 807 of reference (b). A copy of this letter and the deposition transcripts in enclosures (1) through (3), together with certified true copies of the exhibits to those depositions, are posted on the MNF-W SIPR website under SJA, Investigations, Miscellaneous, Haditha. The url is:

http://mnfw/C6/Miscellaneous/default.aspx. This information is password protected and will be provided via email to the trial and defense counsels.

3. In accordance with reference (c), Mr. Sajid Sabah Al-Hussain was appointed as an interpreter for each deposition and he was properly sworn in accordance with Rule for Court-Martial 807(b)(2) of reference (b).

4. In accordance with Rule for Court-Martial 702(f)(8) of reference (b), this serves as notice that the depositions have been properly authenticated. Additionally, each deposition transcript outlined in the enclosures has been authenticated by the deposition officer and the designated court reporter.

5. In accordance with Rule for Court-Martial 702(f)(9) of reference (b), there were no substantial irregularities relative to the taking of any deposition.

K.G. Henderson
K. G. HENDERSON
Colonel, USMCR

Copy to:

SJA
LtCol Riggs, via email at riggsb@marcent.usmc.mil

Trial Counsel
LtCol S. M. Sullivan, via email at sean.sullivan@usmc.mil
LtCol M. K. Jamison, via email at mark.jamison@usmc.mil
Maj D. J. Erickson, via email at daren.erickson@usmc.mil
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N. A. Puckett, Esq, via email at napuckett@comcast.net
Capt N. Gannon, via email at nicholas.gannon@usmc.mil
Maj D. Plowman, via email at donald.plowman@usmc.mil

United States v. Staff Sergeant Frank D. Wuterich, USMC

Certified True Copies of Exhibits in the Deposition of

Abid Al Rahman Waleed Alu Hameed

21 February 2008

Ex 1 (CNN 14 page transcript) (also Ex 2 in the Iman depo in *Wuterich*)

United States v. Staff Sergeant Frank D. Wuterich, USMC

Certified True Copies of Exhibits to the Deposition of

Jameel Mahmood Aashoor

22 February 2008

Exhibit 1 (Diagram)

United States v. Staff Sergeant Frank D. Wuterich, USMC

Deposition of

Khalid Salman Rasif Hussayn Al-Anzi

22 February 2008

- Ex 1 (photo)
- Ex 2 (photo) (also marked as Ex 7 in Khalid Al-Anzi depo in *Tatum*)
- Ex 3 (photo) (also marked as Ex 6 in Khalid Al-Anzi depo in *Tatum*)
- Ex 4 (photo) (also marked as Ex 8 in Khalid Al-Anzi depo in *Tatum*)
- Ex 5 (photo) (also marked as Ex 15 in Khalid Al-Anzi depo in *Tatum*)
- Ex 6 (photo) (also marked as Ex 5 in Khalid Al-Anzi depo in *Tatum* and as Ex 5 in Iman depo in *Tatum*)
- Ex 7 (photo) (also marked as Ex 11 in Khalid Al-Anzi depo in *Tatum*)
- Ex 8 (photo)
- Ex 9 (photo) (also marked as Ex 14 in Khalid Al-Anzi depo in *Tatum*)
- Ex 10 (photo) (also marked as Ex 10 in Khalid Al-Anzi depo in *Tatum* and as Ex 3 in Safah depo in *Tatum*)
- Ex 11 (photo) (also marked as Ex 13 in Khalid Al-Anzi depo in *Tatum*)
- Ex 12 (photo)
- Ex 13 (photo)
- Ex 14 (transcript of video interview, page 31)
- Ex 15 (affidavit, 3 pages total)

United States v. Staff Sergeant Frank D. Wuterich, USMC

Certified True Copies of Exhibits in the Deposition of

Safah Yunis Salim Rasif

21 February 2008

Ex 1 (diagram)

Ex 2 (photo 88) (also marked as Ex 5 in Safah depo in *Tatum*)

Ex 3 (photo 89) (also marked as Ex 6 in Safah depo in *Tatum* and as Ex 1 in Dr. Ayad Depo in *Tatum*)

Ex 4 (photo 93) (also marked as Ex 7 in Safah depo in *Tatum*)

Ex 5 (photo 87) (also marked as Ex 10 in Safah depo in *Tatum*)

United States v. Staff Sergeant Frank D. Wuterich, USMC

Certified True Copies of Exhibits in the Deposition of

Iman Waleed Abid Alu Hameed

21 February 2008

Ex 1 (diagram) (also marked as Ex 6 in Iman depo in *Tatum*)

Ex 2 (CNN 14 page transcript) (also Ex 1 in the Abid Al Rahman depo in *Wuterich*)

Ex 3 (photo 78) (also marked as Ex 7 in Iman depo in *Tatum*)

United States	)	Deposition
	)	
v.	)	
	)	
Frank D. Wuterich	)	
SSgt, USMC	)	
	)	
	)	

The deposition in the aforementioned case was opened at 1055, 21 February2008 at CMOC FOB, Haditha, Iraq.

PERSONS PRESENT

DEPOSITION OFFICER:	**Colonel K. Henderson, USMCR**
TRIAL COUNSEL:	**Major D. J. Erickson, USMC**
ASSISTANT TRIAL COUNSEL:	**Captain C. P. Hur, USMC**
DEFENSE COUNSEL:	**Lieutenant Colonel C. Vokey, USMC**
INDIVIDUAL MILITARY COUNSEL:	**Captain N. Bonner, USMC**
COURT REPORTER:	**Staff Sergeant W. J. Jordan, USMC**
INTERPRETER:	**Sajid Al-Hussain**

United States v. Staff Sergeant Frank D. Wuterich, USMC

Deposition of

Iman Waleed Abid Hameed

21 February 2008

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ENCLOSURE (1)

Enclosure 6:

Video Deposition of
Iman Waleed Abd Al Hameed

* DVD Video will be sent Via FedEx due to the large size of the video.

DC [LtCol Vokey]: Yes, ma'am. I understand that you are the deposition officer for both -- for *United States v. Tatum,* and *United States v. Chessani* as well. Is this a concurrent deposition, or is this just the deposition for Staff Sergeant Wuterich?

DO: I don't know the answer to that, if there are going to be repeat depositions or not.

Does the trial counsel intend to take another deposition on this particular witness?

TC [Maj Erickson]: Yes, ma'am.

DO: Okay. Does that answer your question?

DC [LtCol Vokey]: This is just for Staff Sergeant Wuterich; correct?

TC [Maj Erickson]: Correct.

DO: Are there any other questions?

DC [LtCol Vokey]: No, ma'am.

DO: Thank you. Government, are we ready to call our first witness?

TC [Maj Erickson]: Yes, ma'am.

DO: And I believe that the first witness is Iman Waleed Abid Alu Hameed.

TC [Maj Erickson]: That's correct, ma'am.

DO: Can we please bring the witness in.

Iman Waleed Abid Alu Hameed, an Iraqi national, was called as a witness by the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. What is your full name?
A. Iman Waleed Abid Alu Hameed.

ENCLOSURE (7)

Q. Could you please spell this for the record.

DO: Repeat what just said please.

TC [Maj Erickson]: At this time, I think we would have the translator spell it for us. It's probably going to be a phonetic spelling, but --

DO: Okay.

TC [Maj Erickson]: -- spell it for court reporter purposes.

DO: And, translator, can you please spell her name out loud and in English.

INTRPTR: First name, I-M-A-N. Her father's name is W-A-L-E-E-D. Her last name A-B-I-D, A-L-H-U-H-A-M-E-E-D.

DO: Thank you.

Questions by the prosecution (continued):

Q. Iman, how old are you?

DC [LtCol Vokey]: Ma'am, since I haven't had the opportunity to talk to any of the witnesses and the government has repeatedly, I would like to start asking questions first.

DO: This is not -- this deposition is proceeded by the government --

DC [LtCol Vokey]: Ma'am, it was ordered by the convening authority. It's nothing that says -- in the 702 that says the government gets to go first.

DO: I think we -- can you please state the reason why -- for the record why -- all the reasons why you contend that you think that --

DC [LtCol Vokey]: Well, the reason is because I have not had a opportunity to talk to this witness at all. The government has repeatedly. If there's anybody who needs discovery it's going to be me. So I would like to be the first one.

I do not see any reason why the government needs to go first with these witnesses. I do not see why I can't.

There's nothing in the rule for -- and in fairness, since they have repeatedly talked to the witness and I haven't, the defense wants to go first.

DO: Did you state this objection in writing prior to this moment?

DC [LtCol Vokey]: Ma'am, it wasn't presented to us, I had no idea.

DO: Thank you. Your objection is noted for the record and we will proceed.

DC [LtCol Vokey]: Well, ma'am, can I proceed by going first?

DO: No.

DC [LtCol Vokey]: Can I ask why, ma'am?

DO: Because this was a -- my understanding, this was the questions -- this is a government witness; is that not correct?

TC [Maj Erickson]: Yes, ma'am.

DO: Okay. And the government was the one that asked for this deposition to be conducted; is that correct?

TC [Maj Erickson]: Yes, ma'am.

DO: And did you make a request for this deposition to be conducted at this time? My understanding is that this deposition is being done at the request of the government; is that correct?

TC [Maj Erickson]: That's correct.

DO: Okay. And that's the reason why we are proceeding with the government first.

DC [LtCol Vokey]: All right, ma'am. We object to these depositions being held in the first place. But the depositions were ordered by General Helland so that both parties had the opportunity to explore the testimony. It was part -- just because the government asked for it, that's what Lieutenant General Helland stated.

So since we haven't had the opportunity, we would like

to go first.

DO: And, defense, you will have the opportunity to question the witness, but we are going first with the government.

Thank you.

Please proceed.

TC [Maj Erickson]: Yes, ma'am.

DO: Before we do, is there any other objection that you want to state for the record on this issue? Anything else you want to add to it?

DC [LtCol Vokey]: No, ma'am.

DO: Okay. Please proceed.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Iman, how old are you?
A. Twelve years old.

Q. And do you know when you were born?
A. No, I don't.

DO: I need to ask her to please speak up louder. Could you translate please.

The interpreter did as directed.

Q. Iman, has anybody told you what to say here today?
A. You mean somebody told me what to say here today?

Q. Yes.
A. No, no one told me.

Q. Have you discussed what you were going to talk about today with anybody, prior to coming in today?
A. No.

Q. Iman, do you know why you are here today, and what you are going to talk about here today?
A. No.

Q. Who do you live with right now?

INTRPTR: I don't think she understood the question.

Q. Okay. Who do you live with?
A. With my uncle.

Q. And why don't you live with your mom and dad?
A. They're dead. The Americans came and killed them.

Q. Do you remember the day that that happened?
A. You mean, what day of the month?

Q. No. I just want to know in general if you remember that day.
A. You mean, what day it happened? It happened on Saturday.

Q. Okay. I want you to think to that day and that's what you're going to --

DC [LtCol Vokey]: I'm going to object to the leading questions. I want to hear it from the witness.

TC [Maj Erickson]: Hear what?

DC [LtCol Vokey]: The narratives. I want questions for the witnesses. I don't want anything leading. This is going to be coming in to trial.

TC [Maj Erickson]: I don't --

DO: You have the opportunity to rephrase your question. His objection is noted for the record. If you state it as it is, it will be ruled upon as it is and you can rephrase the question.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. I want you to think about the day -- well, let me rephrase it.

Do you remember that Saturday?
A. Do I remember that Saturday?

Q. The day your mom and dad died, do you remember that day?

A. Yes. It was on a Saturday, but I don't remember the month.

Q. Okay. Fair enough. I want to take you back to that day.

A. What do you mean?

Q. I mean, I want to talk about what happened that day.

A. You mean, say how they died?

Q. Yes.

A. There was an IED that exploded --

DC [LtCol Vokey]: Objection, nonresponsive. That's not part of the question. The witness is just -- I'm not sure what's even going on here. There was no clear question.

DO: Can we pause it for just one second?

First of all, did the interpreter translate everything fully that she said before the objection was made?

INTRPTR: Not everything.

DO: Okay. Please finish what she said.

DC [LtCol Vokey]: Ma'am, I object. The question -- there wasn't even a question that she's deriving at a testimony. I absolutely object.

DO: Okay. I understand your objection, but the witness had said something before you interposed the objection --

DC [LtCol Vokey]: Ma'am --

DO: -- and I have to make sure that what she said is on the record before you interpose the objection.

DC [LtCol Vokey]: No, ma'am. It shouldn't even be said, the witness was asking the government a question. It's completely improper.

DO: I have to make sure that what she said before you spoke is on the record.

Please translate what she said before he made an objection.

INTRPTR: May I ask her again? He interrupted before I could even finish. So I didn't hear the last part.

DO: Okay. Yes.

DC [LtCol Vokey]: I do not even know what's being asked here. I need to have it in English --

DO: What did you ask her?

INTRPTR: I just told her to say, you know, what she said previously.

DO: Okay.

INTRPTR: "There was an IED that exploded at 0730 and the American came. The first thing, they came and killed my dad --

TC [Maj Erickson]: I'm going to stop for a second---

DO: Is that what she said before?

INTRPTR: No.

DO: Okay. And please state fully, your objection for the record, Colonel.

DC [LtCol Vokey]: It's nonresponsive. It wasn't even a question asked and the question the witness was answering. Ask a new question.

DO: Did you have a response to that?

TC [Maj Erickson]: Ma'am, this thing is going to be transcribed, it's not before the Court. The defense counsel has a opportunity to redact anything that he finds objectionable in front of the judge.

At this point, you know, obviously, the board is tasked. I am going to get as foundationally close as I can to get her back to that day. And, you know, he objected, and I will rephrase the question.

DO: Okay.

Questions by the prosecution (continued):

Q. Iman, I want to go back to that day and we are going to

discuss that day. But don't answer until I ask the question; okay?
A. Okay.

Q. The day that your mom and dad died --
A. You want me to start when the IED exploded?

TC [Maj Erickson]: I will ask you the question. I just want you to translate what I am saying. And I do not want an answer until I get the question.

WIT: Okay.

Q. Okay. The morning your mom and dad died, who was in your house?
A. My grandpa and my uncle.

Q. Okay. Just --

INTRPTR: I'm just going to ask her what's their names.

WIT: My uncle Jaheed, my uncle Rasheed, and my grandpa Hameed and grandma Misa (ph) and my brother Esman and my dad Waleed and my aunt Hibba, my brother Abid Rahman, aunt Hameed Iman, my brother, Abdullah, and my sister Asya (ph).

Q. Now, that morning when your mom and dad died, do you remember hearing an explosion?
A. Yes.

Q. What happened after you heard the explosion?
A. They started firing rounds --

Q. Stop for a second. When you say "they" --

DC [LtCol Vokey]: The witness was answering the question.

DO: You have to translate and finish everything that she said before he jumped in.

Did you finish the translation of what she said?

INTRPTR: Yes.

DO: Okay. Proceed.

Questions by the prosecution (continued):

Q. You said -- I have to go step by step; okay? So we are going to be very careful when we go step by step; all right?

DO: Please translate.

The interpreter did as directed.

DO: Proceed.

Q. So after the explosion that morning, what happened after the explosion, right after?
A. The whole household were killed.

Q. Okay. After the explosion, who, if anybody, left your house?

DC [LtCol Vokey]: I'm going to object. This is a --

INTRPTR: "Nobody. We were all sitting in the house" --

DC [LtCol Vokey]: -- suggesting that somebody left the house is completely in question.

DO: Did you get that interpreted?

INTRPTR: Yes.

DO: Please proceed.

TC [Maj Erickson]: The last answer, can I get the translator to repeat the last answer?

DO: Can you repeat the record please.

Court Reporter: The last answer was: "Nobody. We were all sitting in the house."

Questions by the prosecution (continued):

Q. Okay. When you say "Everyone was sitting in the house," tell me where everyone was sitting.
A. We were all sitting in the hall and sitting.

Q. Sitting in the what?

INTRPTR: The hall, basically, the main room.

TC [Maj Erickson]: Permission to approach the witness, ma'am?

DO: You may proceed.

TC [Maj Erickson]: I'm going to hand the witness a blank piece of paper with a pen.

Q. Iman, do you know what a square is? The shape of a square, do you know what a square is?
A. Yes.

Q. Do you know what a rectangle is?
A. Yes.

Q. Okay. Now, you said everyone was sitting in a room. Was that room a square or a rectangle?
A. It was a rectangle.

Q. It was a rectangle?

INTRPTR: It's a square.

Q. I am asking what the shape of the room that everybody was sitting in. What shape was that?
A. It's a square.

DO: You need to repeat what he just said.

The interpreter did as directed.

TC [Maj Erickson]: All right. I'm going to go through the line of questioning again, ma'am.

Previously in her testimony, she said that they were sitting in a room; is that correct?

WIT: Yes.

Questions by the prosecution (continued):

Q. Okay. When you say "they were sitting in a room," who was sitting in a room?
A. My dad, my mom, my grandmother, my grandfather, my uncle, and my other uncle, my aunt, my sister, my brother and my other brother.

Q. Okay. We're going to go through each one of these, and I need the names for all of them.

Your dad's name?
A. Waleed Abdul Hameed.

Q. And your mom's name?
A. Esman Hussayn-Man.

Q. Your grandma's name?
A. Misa Abdulin (ph).

Q. Your grandfather's name?
A. Abdul Hameed Hussayn (ph).

Q. Your uncle's name?
A. Jaheed Abdul Hameed.

Q. Your other uncle's name?
A. Rasheed Abdul Hameed.

Q. Your aunt's name?
A. Hibba Abdul.

Q. And your sisters' name?
A. Asya Waleed.

Q. Your brother's name?
A. Abdul Rahman Waleed.

Q. And your other brother's name?
A. Abdulla Waleed.

Q. Okay. And they were all sitting in a room? You were all sitting in a room?
A. Yes.

DC [LtCol Vokey]: Objection, leading.

TC [Maj Erickson]: My response is, you know, it's foundational. I'm just taking her back to her previous testimony, just repeating her testimony.

Questions by the prosecution (continued):

Q. Okay. What were you doing in the room after the explosion?

DC [LtCol Vokey]: Objection. It's vague as to the time.

DO: Will you please repeat the question.

Q. What were you doing in the room after the explosion?

DC [LtCol Vokey]: I would still object. I mean, are we talking about -- what explosion are we talking about? When are we talking about?

TC [Maj Erickson]: Ma'am, the witness testified there was an explosion. I took her back to that moment. I'm just trying to get clarification about what happened after the explosion.

DO: Restate the question for the interpreter.

TC [Maj Erickson]: Yes, ma'am.

Q. You testified that there was an explosion; is that correct?
A. Yes.

Q. And after the explosion, you said you were all sitting in a room; is that correct?

DC [LtCol Vokey]: Objection, leading.

TC [Maj Erickson]: She's a young child, ma'am. I mean, you are allowed to lead when you are interviewing a young child to get them back to their memory and for appropriate foundation. We can take this up later, but I have got to get her into the time that this happened.

DO: Please proceed.

TC [Maj Erickson]: Okay.

Questions by the prosecution (continued):

Q. When you were all in the room, what were you doing in the room?

DC [LtCol Vokey]: Objection. Vagueness of time.

INTRPTR: "She was sitting."

Q. And how long were you sitting in there after the explosion?
A. Nine [sic].

Q. How long how much time had transpired after the

explosion to where -- and how long were you sitting in that room?

A. About an hour.

Q. Okay. And I want you to think about that hour. Can you tell me what happened, starting from the beginning during that hour?

DC [LtCol Vokey]: Objection. Basis. What is he talking about? The beginning of what? From the explosion? From when she was sitting in there?

DO: Did you want to change your question?

TC [Maj Erickson]: I can rephrase it, ma'am.

Questions by the prosecution (continued):

Q. Iman, I know this is hard, but it's important that I go step by step.

DO: What did she say? You need to say it loud enough for the court reporter.

INTRPTR: I didn't hear her.

WTT: No problem.

Q. I need to know what happened. And we have to go step by step; okay?

A. After the explosion, my aunt took my sister Asya, my uncle Rasheed told me that there's something in my head. He asked me what it is and I told him a bullet. I told him I am going to go drink water and come back --

DC [LtCol Vokey]: I'm going to object to the narrative. I want to make sure a question was here.

DO: Did you finish interpreting what she had said?

INTRPTR: Yes.

DO: Okay.

Questions by the prosecution (continued):

Q. Iman, again, we have to take this step by step. So just answer the question that I am going to ask; okay? And I

will try to make it as easy as I can.
A. Okay. That's fine.

Q. Okay. After the explosion, did you see any military or Americans in your house?

DC [LtCol Vokey]: Objection. This is leading and suggestive. You just need to ask the witness what she saw instead of asking what military did you see.

DO: Did you want to rephrase the question or let the interpreter finish?

TC [Maj Erickson]: Let the interpreter finish, ma'am.

DO: Ask her to go ahead and answer the question.

WIT: I saw soldiers.

Questions by the prosecution (continued):

Q. Okay. How soon after the explosion did you see soldiers?
A. About five or ten minutes.

Q. Okay. Where did you see the soldiers?
A. In the house.

Q. Okay. And when you saw the soldiers, where were you in the house?
A. Sitting in the hall -- the living room.

Q. Okay. Now, when you say you saw soldiers, do you know what kind of soldiers they were?
A. No.

Q. Had you seen soldiers like that before?
A. No.

Q. Okay. Did they speak to you at all when you saw them?
A. Yes.

Q. And what did they say?
A. They said what's in the house, and I said the Marines came and killed us.

Q. When you said the Marines came and killed us, when did that happen?

A. It happened at 0730.

Q. Okay. 0730 on the day of the explosion?
A. Yes.

Q. Okay. And you say "Marines came and killed us," how do you know they were Marines?

DC [LtCol Vokey]: Objection. The witness did not say Marines. He's throwing this in there. You cannot do that. That's absolutely suggestive throwing this on the record. The witness said "soldier," it's soldier. You cannot change the testimony by the trial counsel.

TC [Maj Erickson]: Sir, the translator said Marines. So if you've got an objection or the translator translated that portion wrong, then I need to know that. But my translator did not indicate that she said anything other than Marines.

I would ask the translator did he translate "Marines" from what she said -- or did she say "Marines".

INTRPTR: I believe I heard her say "Marines".

TC [Maj Erickson]: Okay.

DO: Did she answer the question or --

INTRPTR: I'm just asking --

DO: Okay.

TC [Maj Erickson]: Okay, Iman --

DO: But the defense had posed an objection, and I want to make sure that her translation got completely said.

INTRPTR: Yes, ma'am.

DO: Okay. Continue please.

Questions by the prosecution (continued):

Q. Iman, you said before "Marines" how do you know they were Marines?
A. Because one time they came and they searched us. And my dad said, What are you guys, and they said, We are

Marines.

Q. And can you tell us where were you in your house when you saw the Marines that day?
A. Yes, in the house.

Q. Where in the house?
A. In the hallway sitting.

Q. In the hallway sitting?

INTRPTR: I'm sorry. "The living room."

TC [Maj Erickson]: Ask the question again please. Where was she at?

WIT: I said in the house.

Q. Okay. And where in the house was she?
A. In the living room.

Q. Okay. And that's the first time that you saw the Marines that day?
A. Yes.

Q. Okay. Now, the room that you were in when you first saw the Marines, is that a square or a rectangle?
A. It's a rectangle.

TC [Maj Erickson]: I think the translator is not interpreting the rectangle right, he's saying circle.

INTRPTR: Can I ask one of them to -- because I'm getting confused with this, to tell me in Arabic.

DO: There's a confusion over how to translate a square or a rectangle. And I don't know if it would be an objection to just draw a picture of what a square is and what a rectangle is and just show the witness, did it look like this, or did it like this.

TC [Maj Erickson]: I think I can work on it.

DO: Okay.

TC [Maj Erickson]: I'll try it a different way.

Questions by the prosecution (continued):

Q. Iman, can you, on that piece of paper I gave you, draw the shape of the room real big -- real big in the middle of that paper there?

The witness did as directed.

TC [Maj Erickson]: Can you hold that up and show it to us.

The witness did as directed

TC [Maj Erickson]: Is the video picking that up? That's all right. I'll make it part of a deposition exhibit.

Questions by the prosecution (continued):

Q. Iman, that's the shape of the room that you were in?
A. Yes.

Q. And you said you were in that room the first time that you saw the Marines?
A. Yes.

Q. Okay. And when you first saw the Marines, where were you in that room? Please mark it with a Number 1.

The witness did as directed.

Q. Okay. Who else was in that room when you first saw the Marines?
A. Everybody.

Q. And when you say "everybody" was that all of the people that you mentioned before?
A. Yes.

Q. Okay. So your dad -- please mark a Number 2 of where your dad was in that room.

The witness did as directed.

DC [LtCol Vokey]: If I can walk up and look.

DO: Is the witness, for the record, writing numbers in Arabic?

INTRPTR: Yes.

TC [Maj Erickson]: We can have him translate it.

Q.	Can you, please, mark a Number 3 where your mom was in that room.
A.	I don't remember.

Q.	Okay. You do not remember?
A.	Yes.

Q.	Can you, please, mark a Number 4 for where your grandma was.

The witness did as directed

Q.	Can you, please, mark a Number 5 for where your grandfather was in that room.

The witness did as directed

Q.	Can you, please, mark a Number 6 for where your uncle Jaheed was.

INTRPTR: Can you repeat that question?

TC [Maj Erickson]: A Number 6 for uncle Jaheed.

WIT: I don't remember.

Q.	Okay. How about her other uncle, Rasheed?
A.	Just a [inaudible].

Q.	Okay. How about your aunt Hibba? Do you remember where she was sitting?
A.	She wasn't married.

Q.	Okay. Do you know where she was sitting in that room?
A.	She wasn't married.

Q.	Okay. Was Hibba in that room?
A.	No.

Q.	Okay. How about her sister?
A.	What sister.

Q.	Was her sister there? And her sister is Asya?
A.	That's my sister.

Q.	Yes. Was she in that room?
A.	Yes.

Q. Okay. Can you give me a Number 9 for where her sister was. Mark it as Number 9.

The witness did as directed

Q. Okay. Now, your brother, Abdullah, was he in that room?
A. No, with my dad.

Q. With your dad? And he was not in that room?
A. No. He was with my dad sitting next to the Americans -- or standing next to the Americans.

Q. And that was not in that room?
A. No.

Q. And how about your other brother?
A. Yes, he was.

Q. Was he in that room, your other brother?
A. Yes.

Q. Can you mark where he was at with a Number 8.

The witness did as directed.

Q. Okay. Now, do you know how to make a circle?
A. Yes. Small or big?

Q. Well, it doesn't matter. But I'll tell you where I need it.

I want you to put a circle where a door is in that room. Everywhere there's a door, I want a circle along the line.

The witness did as directed.

Q. Now, did any of those doors go to outside the house?
A. Yes.

Q. And can you put an "X" through the door -- through the circle where the door is that goes outside.

The witness did as directed.

Q. Okay. Now, that door where you have the circle and the "X", was that door open that morning?
A. No. But they came and they break it -- they broke it.

Q. I'm sorry. What was that last --

INTRPTR: "They came and they broke it."

Q. Who came and broke it?
A. The Marine when they killed us.

Q. So the first time that you saw the Marines, did they come through a door?
A. They came from the kitchen door.

Q. Okay. When is the first time -- well, you stated earlier that you saw Marines while you were in that room; is that correct?

INTRPTR: I'm sorry. Would you say this --

TC [Maj Erickson]: Yeah.

Q. I guess, first I need to ask you did you see Marines while you were in that room?
A. Yes.

Q. Okay. And did you see Marines more than once while you were in that room?
A. Just one time.

Q. Okay. So that one time, can you tell me where you saw Marines in that room?
A. When they came and searched us.

Q. Okay. And do you remember how many they were?
A. No.

Q. Was there just one --

DC [LtCol Vokey]: I'm going to object. No, no, no, that's leading, absolutely leading. The witnesses said she did not know. That's what I heard from the interpreter.

DO: You can proceed with the question or rephrase it.

Questions by the prosecution (continued):

Q. Was there more than one?

DC [LtCol Vokey]: Objection. That's leading. The witness --

INTRPTR: "It was more than one."

TC [Maj Erickson]: Okay.

DO: Your objection is noted for the record.

Questions by the prosecution (continued):

Q. Was there more than ten?

DC [LtCol Vokey]: I'm going to object again. That's absolutely leading. The witness was --

INTRPTR: "I don't remember."

DC [LtCol Vokey]: The witness was asked how many was in there and she did not know.

DO: Okay. She said something back to you and you translated it. Can you please state for the record what the witness had said.

INTRPTR: I said I don't remember. I have to be precise on what she said. And if I don't remember, I cannot --

DO: Okay. Please ask her to repeat what she said.

The interpreter did as directed.

WIT: On when?

DO: Okay. You may --

TC [Maj Erickson]: Was there more than two?

DC [LtCol Vokey]: Objection.

WIT: I don't remember.

Questions by the prosecution (continued):

Q. Fair enough. Did any Marines enter that room?
A. Yes, one.

Q. Okay. And where did that Marine enter?
A. From the living room door.

Q. Okay. Now, can you put a second circle by the door in

which they came into that room -- or he -- that one Marine came into the room.
A. "X" or a circle?

Q. I want another circle next to the one she showed me.

The witness did as directed.

Q. And you said that door opens up from inside the house?
A. Yes. From the other side of the house.

Q. Okay. Did anything happen prior to that Marine entering through that door?
A. What do you mean?

Q. What, if anything, did you hear or see before he came into that door?

DC [LtCol Vokey]: Objection. It's vague.

WIT: I didn't hear anything.

TC [Maj Erickson]: Okay. We need to stop, ma'am. I need to change the tape.

DO: Can you ask the witness if she needs a break. Ask her if she needs a break or need to go to the bathroom.

The interpreter did as directed.

WIT: And then finish after I come back?

DO: I was just wondering if she needed a break.

WIT: Yes.

TC [Maj Erickson]: The court reporter needs a break too.

DO: Okay. What do you say, five minutes after? Will that work?

TC [Maj Erickson]: That's fine with me, ma'am.

DO: Okay.

DC [LtCol Vokey]: It's good with me.

DO: Okay.

The deposition recessed at 1209, 21 February 2008.

The deposition opened at 1211, 21 February 2008.

DO: We are back on the record. I will remind the witness that you are still under oath, and please try to speak up as loudly as possible so that the camera can hear your voice.

Counsel, you may proceed.

TC [Maj Erickson]: Ma'am, one thing: Sajid approached me outside the presence of the deposition officer and defense counsel and indicated that the witness was confused.

I just ask the deposition officer to remind her that she can't talk with either counsel while the depositions are going.

DO: Interpreter, you are reminded that you are not to talk to either one of the counsels while the depositions are going on. If you have got any questions, please, direct them to me.

INTRPTR: Sure.

DO: Thank you.

Counsel, you may proceed.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Iman, you left off in saying you saw one Marine enter that room. Do you remember that?
A. Yes.

Q. Can you tell us what, if anything, you saw that Marine do?
A. He didn't do anything.

Q. Okay. And how long was he -- did he go inside the room?
A. Yes.

Q. How long was he in that room?
A. He didn't stay there for long, five minutes.

Q. Okay. And you didn't see him do anything?
A. No.

Q. Okay. Did you hear anything?
A. No.

Q. Okay. And did you see him leave the room?
A. Yes.

Q. And do you remember which door he left?
A. From the kitchen door.

Q. Okay. And can you tell me which door it is on that diagram that you drew for me. Can you indicate which door that Marine left from? Just tell me.
A. Should I put anything on it?

Q. No, no, just point to it.

TC [Maj Erickson]: She's pointing to the door where she indicated, a previous door with two circles.

Q. Now, when that Marine left, did you ever see Marines again after that?
A. No.

Q. That was the last time that you saw the Marines that day?
A. Yes.

Q. Okay. And what was your family in the room doing?
A. They did not do anything.

Q. Okay. Did any of your family members get up and leave?
A. No.

Q. Okay. Did you leave?
A. No.

Q. Okay. Did you ever leave that room that day?
A. No.

Q. You stayed in the room all day?
A. No, not the whole day.

INTRPTR: I'm just going to ask her --

DO: Please ask the witness to repeat what she just said.

WIT: No. Not the whole day, but they left -- when the Marine left, then I got up.

Q. You got up when the Marine left?
A. Yes.

Q. And what did you do?
A. I didn't do anything.

Q. That day, did you ever leave that room?
A. No, I left.

Q. Okay. Why did you leave?
A. Just, no reason.

Q. Did anybody leave with you?
A. No.

Q. You left all by yourself?
A. Yes.

Q. Did you go outside your home?
A. No. Not outside of the house.

Q. Okay. Did you ever leave your house that day?
A. No.

Q. You stayed at your house all day?
A. Yes.

Q. Your family was there with you?
A. Yes.

Q. Iman, you stated earlier that you said you live with your uncle now; is that correct?
A. Yes.

DC [LtCol Vokey]: Objection. Relevance.

DO: Would you translate what she said.

INTRPTR: "Yes."

TC [Maj Erickson]: And what was the answer?

INTRPTR: "Yes."

Questions by the prosecution (continued):

Q. Okay. And why do you live with your uncle?

DC [LtCol Vokey]: Objection. Relevance, asked and answered.

WIT: When my dad and mom died, we got treated in Baghdad and when they treated us then when we came back to Haditha, my uncle said come to his place.

Questions by the prosecution (continued):

Q. When you said "treated us" who are the "us"?
A. I don't know.

Q. When you said you were treated, was it just you who was treated?
A. Me and my brother.

Q. And which -- what brother? What's his name?
A. Abdul Rahman.

Q. Okay. And what were you treated for?
A. Because we got injured and they treated us.

Q. Okay. How did you get injured?
A. With a bullet.

Q. Okay. How did you get injured with the bullet?
A. They were shooting bullets and the bullet came.

Q. Who is "they"?
A. The Marines.

Q. Okay. Did you see who shot you?
A. No.

Q. And how do you know they were Marines?
A. My maternal aunt, and then when we came to Haditha, my aunt said they were the Marines who killed them.

Q. So you didn't see anybody -- you didn't see yourself -- you didn't see who shot you that day is what you're saying?
A. No.

Q. And where did you get shot?

DO: Please ask the witness to give an audible response.

WIT: Right here in my leg.

Questions by the prosecution (continued):

Q. Now, where were you at when you got shot?
A. With my family in the living room.

Q. Okay. And when was that when she got shot? Was it the same day as the explosion?
A. Yes.

Q. And you said earlier it happened in that room that you drew on that diagram there?

INTRPTR: I'm sorry.

TC [Maj Erickson]: Did it happen in the room were she drew there on the diagram?
A. Yes.

Q. Okay. And do you know what your brother's injury was?
A. Yes.

Q. What was that?
A. It's by the back.

TC [Maj Erickson]: The witness indicated the back of her neck; is that right?

WIT: Yes, on the back.

Q. On the back?
A. Yes.

Q. And do you know what his injury was caused from?

DC [LtCol Vokey]: Objection, speculation. She already said she didn't see who shot her.

WIT: Yes, I know.

Questions by the prosecution (continued):

Q. You do know?
A. Yes.

Q. And what kind of injury was it?
A. It was glass.

DC [LtCol Vokey]: I'm sorry. What?

INTRPTR: Glass.

DC [LtCol Vokey]: Glass?

INTRPTR: Yes.

DO: He said glass.

DC [LtCol Vokey]: Okay. That's fine.

Questions by the prosecution (continued):

Q. Now, how did you get to the hospital?
A. The American came in the helicopter and they took us to the hospital.

Q. Okay. When you say "American came," where did they come? I mean did you meet them outside? Inside? Where did --

DC [LtCol Vokey]: Objection. Compound question.

WIT: They came to the house and they saw us -- to our house and they saw us.

Questions by the prosecution (continued):

Q. Okay. When they came to the house, how many were they?
A. Just two.

Q. Okay. And do you know -- you said "Americans". Do you know what kind of Americans? I mean, do you know whether they were -- I mean, can you describe them for us? What were they wearing?
A. They spoke Arabic and they were wearing green.

Q. Okay. And how many were there?
A. Two.

Q. And they were both wearing green?
A. Yes.

Q. And they were both speaking Iraqi?
A. Yes.

Q. Okay. Now, what did they do when they came in the

house?

A. They saw us, they said get up and we said, no, we refuse. They said get up we'll treat -- take you and treat you. They took us and they treated us. I called my aunt in Baghdad at 8:00 in the morning. I told my aunt that we were in the hospital, the hospital of Amen Senoh (ph).

She came, she took us and she treated us in the hospital, the hospital of doctors.

Q. Okay. Now, when the two guys in the green came and took you and your brother, did they go inside the room that you were in?
A. Yes.

Q. Did they take anybody else out of that room?
A. No, just me and my brother.

Q. Okay. Was there anybody beside you and your brother in there?
A. No. They were all dead.

Q. Okay. When you say "they were all dead," who were all dead?
A. My mother, my dad my grandpa, my grandmother, my uncle and my uncle and my brother, Abdul.

Q. Okay. And all those people that you just said that were dead, they were all in that room?
A. Yes.

Q. Do you know how they died?
A. When they shot us, you know, they threw a bomb.

Q. Did you see that?
A. Yes.

Q. You saw them throw a bomb?
A. Yes.

Q. When you say "they," who?
A. The Marines.

Q. Okay. And you saw the Marines throw it?
A. Yes.

Q. Where were you?

A. When they came and shot us, they shot my father first. He was reading the Koran in the room.

DC [LtCol Vokey]: Objection. Nonresponsive.

TC [Maj Erickson]: I want to know about the bomb. So take her back, say "I want to know about the bomb".
A. When they threw a bomb, I saw my grandpa and my aunts and my uncles, they were all dead. I went to my neighbor's house and I saw they were dead too.

DC [LtCol Vokey]: Objection --

WIT: -- then I came back.

DC [LtCol Vokey]: -- nonresponsive again.

Questions by the prosecution (continued):

Q. She said that they threw a bomb. Did she see someone throw a bomb?
A. Yes.

Q. Okay. How many?
A. One.

Q. Okay. And then after you saw the one, what was the one? What was he wearing?
A. I don't know.

Q. Were they wearing green?
A. I don't know.

Q. Okay. So you saw one throw a bomb?
A. Uh-hmm.

Q. And after you saw that one throw a bomb, what happened right after that?
A. They threw a bomb and they left.

Q. Okay. I mean, you keep saying "they" and you're telling me you only saw one?
A. Yes.

Q. Okay. And then after the bomb, did you look around the room?
A. You mean the Americans?

Q. No. I'm asking did you see what happened after the bomb was thrown? Right after the bomb was thrown what happened?
A. Nothing happened. They shot us and they just left.

Q. Okay. You say "they shot us" did you see who shot you?
A. No, I didn't. But they started shooting from the living room door.

Q. Okay. How many did you see at the living room door shooting?
A. Two.

Q. Okay. And do you know who they were?
A. No.

Q. Okay. Did you see the two shooting after the bomb exploded or before?
A. Before.

Q. After you saw the two shooting at the door what happened next?
A. They threw the bomb and they left.

Q. And did the bomb explode?
A. Yes.

Q. And you saw it?
A. Yes.

Q. And you heard it?
A. Yes.

Q. And the same thing with the shooting before the bomb went off, did you see it?

INTRPTR: I'm sorry. What did you say again?

Q. You said before the bomb went off there was two guys at the door shooting; is that correct?
A. Yes.

Q. Did you see them shooting?
A. Yes.

Q. What were they pointing at?
A. Toward my grandpa because my grandfather was in front of the door.

Q. Okay. Is that the only place they pointed?

INTRPTR: I'm going to ask her to repeat what she said.
A. They shot toward my grandfather. He fell on the ground and then took his head up and they shot him twice in the heart and he died.

Q. And was that the end of the shooting?
A. Yes.

Q. There was no more shooting?
A. No.

Q. And then they threw the bomb?
A. No.

Q. No?
A. Yes, sir.

Q. Okay. So what happened after they shot the grandpa?
A. Nothing happened.

Q. Okay. Did your grandpa have a weapon in that room?

DC [LtCol Vokey]: Leading, leading, leading.
A. No.

Q. Okay. Did anybody else shoot from inside that room?
A. You mean kill some more?

Q. No. I just want to know if there was other shooting going on in that room.
A. No.

Q. Do you know if there was any weapons in that room?
A. No.

Q. Did your uncles have any weapons?
A. No.

Q. Did your dad?
A. No.

Q. You said earlier that you were shot. Do you know when that was when you were shot?
A. Yes.

Q. Was it before or after the bomb exploded?

A. After.

Q. Okay. And did it happen in that room that you were in?
A. Yes.

Q. Were you awake when you were shot?
A. Yes, I was awake.

Q. Did you know you had been shot?
A. Yes.

Q. Do you know how you were shot?
A. No, I didn't see. All the sudden, I saw my leg bleeding.

Q. Did you hear anything before you started bleeding?
A. No.

Q. Did you see anything before you started bleeding?
A. No.

Q. Besides your family that day, who else was in that house that day?
A. No one.

TC [Maj Erickson]: I'm going to ask for a small break, ma'am, in place, five minutes if I could, and excuse the witness.

DO: Okay. We will just take a break off the record.

The deposition recessed at 1240, 21 February 2008.

The deposition opened at 1250, 21 February 2008.

DO: We are back on the record. I will remind the witness that you are still under oath.

Counsel, you may proceed.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Before we broke, Iman, you said that your grandfather was shot?
A. Yes.

Q. And you stated earlier that you believed that you were

shot too?
A. Yes.

Q. Do you know whether or not anybody else in the house was shot?

INTRPTR: Could you repeat that question.

DO: Please repeat.

Q. Do you know if anybody else in the house that day was shot?
A. My uncle he was injured, but he died.

Q. Okay. And which uncle was this?
A. Rasheed.

Q. And do you know how he died?
A. He told me I'm going to go drink water, but he didn't go to drink water. He went to my grandfather's house. He saw the Americans --

DC [LtCol Vokey]: Objection. Lacks foundation, and this is hearsay --
A. -- standing [inaudible], they shot him -- a bullet in the heart.

DC [LtCol Vokey]: Objection. I'm going to object. We have to have the witness only testify to what the witness saw instead of relating something else. This is our shot at the witness and you can't handle it.

DO: Do you want to rephrase the question?

TC [Maj Erickson]: No, ma'am.

Questions by the prosecution (continued):

Q. Did you see that happen?
A. No.

Q. Then how do you know it happened?
A. When we went to Baghdad, my uncle told us.

Q. Other than Rasheed, do you know if anybody else died that day in your house?

DC [LtCol Vokey]: Objection this --

WIT: Yes.

DC [LtCol Vokey]: -- facts not in evidence.

DO: Repeat what she said.

INTRPTR: "Yes".

Questions by the prosecution (continued):

Q. And you stated earlier, much earlier in your testimony, you gave me the whole list of who died that day. And I'm going to go down each one, and I'm going to ask you if you know how they died; okay?

We have already talked about your grandfather --

DC [LtCol Vokey]: I'm going to object to these questions too. The witness has already demonstrated she doesn't have the foundation to answer these questions.

DO: Okay. Your objections are noted.

Questions by the prosecution (continued):

Q. We have already gone over your grandfather, and we have already gone over your uncle Rasheed. Do you know how your grandmother died?

A. My grandma? When my father was reading the Koran and they killed him?

DC [LtCol Vokey]: Objection. The witness lacks the foundation. She had no ability to see this happening. Her own testimony says that she was in a completely different room.

A. She went to him and the American came and they killed her.

DC [LtCol Vokey]: Objection again.

TC [Maj Erickson]: Did you see --

DO: Please let the counsel state his objection.

DC [LtCol Vokey]: The witness didn't see this happening, it lacks foundation.

DO: Thank you.

Questions by the prosecution (continued):

Q. Did you see that happen?
A. No.

Q. Okay. How about your mom? How did she die?
A. She was sitting beside me. Me and her were sitting. They shot her and she died.

Q. And when you said "they" who is "they"?
A. The Americans.

Q. Okay. And you saw then shoot your mom?
A. Yes.

Q. How many were there?
A. One.

Q. Okay. How about your dad? How did he die?
A. He was reading the Koran --

DC [LtCol Vokey]: Objection. Lacks foundation. Again, their witness lacks the ability to proceed at this and that what she didn't observe.

A. They came to him -- to the room, they burned the room, they shot him --

DC [LtCol Vokey]: Objection. Nonresponsive.

Q. When you say "they," who do you mean by "they"?
A. The Americans.

Q. Did you see that happen?
A. No.

Q. And you said your brother Abdullah, how did he die?
A. He was sitting next to my mom. He went to my dad because he loved him too much. The Americans take him and they shot him.

Q. Did you see that happen?
A. No.

DC [LtCol Vokey]: I'm sorry. She said no?

INTRPTR: Yes.

DO: Correct. Meaning she said "no".

DC [LtCol Vokey]: Thanks.

Questions by the prosecution (continued):

Q. Your uncle Jaheed, do you know how he died?
A. He was sitting down next to me and the American came and they shot him.

Q. And you saw that happen?
A. Yes.

Q. And how many were there?
A. Four or five. They came into the living room.

Q. Do you know who they were?
A. The Marines when they killed us.

Q. Did you say four or five killed your uncle?
A. Yes.

Q. And we are talking about uncle Jaheed?
A. Yes.

Q. And he was sitting beside you?
A. Yes.

Q. In the room that you drew there on that diagram?
A. Yes.

Q. And you saw him get shot?
A. Yes.

Q. How many times did he get shot?
A. One time.

Q. When you saw those four or five Marines shoot your uncle Jaheed, did you see them shoot anybody else while they were in that room?

INTRPTR: I'm sorry. Who's --

TC [Maj Erickson]: When you saw your uncle Jaheed get shot, did the four or five Marines that you had that were in there shoot anybody else?
A. Yeah. They shot my uncle, Rasheed.

Q. Okay. But did she see them shoot anybody else after they shot her uncle?

A. Yes.

Q. Who did you see that was shooting?
A. They shot my uncle Jaheed and my uncle, Rasheed.

Q. Now, are you saying you saw your uncle Rasheed get shot?
A. Yeah. The same people that killed by uncle Rasheed, they killed my uncle, Jaheed.

Q. Where was your uncle Jaheed shot again?

INTRPTR: Which uncle?

TC [Maj Erickson]: Jaheed. Is it actually pronounced Ja-heed (ph) or Ga-leed (ph)?

INTRPTR: Ja-heed.

TC [Maj Erickson]: Okay. Jaheed.

Q. Where was he at when he was shot?
A. He was sitting beside me.

Q. Where?
A. I was sitting, and he was sitting next to me.

Q. Okay. He was sitting next to you. And where were you sitting?

INTRPTR: I do not understand the word she's referring to. I'm going to ask her --

TC [Maj Erickson]: Well, I'll rephrase the question.

Q. Were you and your uncle sitting in the room that you drew for me on that piece of paper?
A. Yes.

Q. Okay. And you say that you saw your uncle Jaheed get shot?
A. Yes.

Q. And when you saw him get shot, how many shots were there again?
A. One.

Q. Okay. After that one shot, was there anymore shooting in that room?

A. No.

Q. That was the last shot?
A. Yes.

Q. Okay. And before that shot -- I'm sorry. And besides that one shot on your uncle Jaheed, was there any shooting before that shot?
A. Yes.

Q. Okay. And do you remember how many shots before your uncle Jaheed was shot, how many shots you heard?

INTRPTR: I'm sorry. Would you repeat this.

Q. How many shots before the shot that -- before Jaheed was shot, how many did she hear?
A. None.

Q. Did you see -- I'll ponder this one for a second.

You said there was four or five Marines in the room when your uncle Jaheed was shot?
A. Yes.

Q. And they were inside that room that you drew for me right there?
A. Yes.

Q. Did you see those four or five Marines enter that room?
A. Yes.

Q. And what did they do when they first entered the room?
A. As soon as they -- when they first entered, they came to my uncle Jaheed. They came up to him and they killed him.

Q. Okay. When you say "they" how many actually shot your uncle? Did you see?
A. No.

Q. No what? I'll rephrase it. Did she see -- I'll strike it.

After the Marines entered the room and walked up to her uncle Jaheed and shot him, what did they do next?
A. They didn't do --

Q. They what?

INTRPTR: "They did not do anything".

Q. Okay. But they stayed in the room?
A. No, they left.

Q. Was that before or after the bomb?
A. After the bomb.

Q. Was your mom and brother still in that room when they left?
A. Yes.

Q. And were they dead?
A. Yes.

Q. Was your grandpa already dead too?
A. Yes.

Q. Okay. Just talking about the people that were in that room, who was the first to die?

INTRPTR: Who was the first to die?

TC [Maj Erickson]: Yes.
A. The first one was my grandfather.

Q. Okay. And did you see how he died?
A. Yes.

Q. Who was the next one?
A. My dad.

Q. Okay. And he was in that room?
A. It was in his room.

DC [LtCol Vokey]: He was in his room?

INTRPTR: Yes.

DC [LtCol Vokey]: I'm going to object. The witness lacks foundation. She didn't witness -- we have been through this before.

Questions by the prosecution (continued):

Q. And then after your dad, who was the next one?

A. My grandmother.

Q. Okay. And was she in that room?
A. Yes.

Q. Who was the next one?
A. My uncle.

Q. Which one?
A. Jaheed.

Q. And after Jaheed, who was after him?
A. My uncle Rasheed.

Q. Okay. And who after Rasheed?
A. My mother.

Q. Okay. And your mother, did you see how she died?
A. No.

Q. Okay. Who was after your mother?
A. My brother.

Q. Did you see how he died?

DC [LtCol Vokey]: I'm going to object to the last questions. He is asking how she died, who died and she didn't even perceive these.

DO: Your objection is noted.

Counsel, did you want to rephrase or --

TC [Maj Erickson]: No. There's no other way of rephrasing it.

DO: Okay. Let's go on.

Questions by the prosecution (continued):

Q. Iman, after you saw your uncle Jaheed get shot, you saw four or five Marines in your room?
A. Yes.

Q. And then you testified that they left after they shot your uncle Jaheed; right?
A. Yes.

Q. Did you ever see Marines come back into that room?

A.	No.

Counsel conferred with co-counsel.

TC [Maj Erickson]: I'm going to pass the witness, ma'am.

DO:	No other questions?

TC [Maj Erickson]: No, ma'am.

DO:	Does the defense counsel have any questions they would like to depose?

DC [LtCol Vokey]: We do, ma'am. I would like to have about another 10-minute break.

DO:	Sure. No problem. We will go off the record.

The deposition recessed at 1311, 21 February 2008.

The deposition opened at 1330, 21 February 2008.

DO:	We are back on the record. And I will remind the witness that you are still under oath.

Also, I wanted to ask a question before we proceed further. I note that we do have a diagram. Was there an intention to put this into evidence --

TC [Maj Erickson]: Yes, ma'am. I believe --

DO:	-- shall it be marked?

TC [Maj Erickson]: Yes, ma'am, as Deposition Exhibit 1.

DO:	Deposition Exhibit 1.

TC [Maj Erickson]: That would be the diagram of the drawing, by the way.

DO:	Correct.

Counsel for the defense, do you have any questions you would like to impose at this time?

DC [LtCol Vokey]: Yes, ma'am.

DO:	Okay. Thank you.

DC [LtCol Vokey]: Good morning, Iman. My name is Lieutenant Colonel Vokey.

CROSS-EXAMINATION

Questions by the defense:

Q. How old are you?
A. 16.

Q. You are a very brave girl for coming here this morning. Is it very difficult?
A. No.

Q. No? The house in the diagram, have you lived there your whole life?
A. Yes.

Q. And who lived next door to you?
A. At that house?

Q. In the house next to it.
A. It was Yunis' house.

Q. And is Yunis' house -- is Yunis related to you?
A. He's my cousin.

Q. And tell me your other neighbors you had?
A. We have three neighbors.

Q. And what were their names?
A. Yasim's house, Sajid's house and Yunis' house.

Q. And did you know anyone who lived across the street?
A. No.

Q. No? What other friends did you have in the neighborhood?

INTRPTR: I'm sorry. Did you say "friends"?

DC [LtCol Vokey]: Yes, friends.

WIT: Safah, Tyef (ph), and Asron (ph), Fateema (ph) and Nebbeth (ph) and Shaymon (ph).

Q. And what did Nebbeth live?
A. She's my cousin.

Q. And where did she live?
A. In the same neighborhood.

Q. Did you do a lot of things with your neighbors?
A. Like what?

Q. Did you eat together?
A. Yes.

Q. Did you play together?
A. Yes.

Q. Did you have big family gatherings?
A. Yes.

Q. And lots of people who come?
A. Yes.

Q. You knew your neighbors very well?
A. Yes.

Q. It was a lot of fighting in your neighborhood wasn't there?
A. No.

Q. No? Did you know of other bombs in the road?
A. Yes.

Q. Did you know of the house that got bulldozed?

INTRPTR: I'm sorry?

Q. Does she know about the house that got destroyed by the American bulldozer?
A. In the valley, in our area, they didn't do anything.

Q. There's a house owned by Ayabba (ph) Neffa -- the house was owned by Ayabba Neffa. Does she know that house?

DO: Could you repeat what she said for the record.

INTRPTR: "No".

TC [Maj Erickson]: Ma'am, we need to change tapes real quick.

DO: Okay. We will go off the record for a second.

The deposition recessed at 1338, 21 February 2008.

The deposition opened at 1339, 21 February 2008.

DO: We are back on the record. You are still under oath.

Counsel, you may proceed.

Questions by the defense (continued):

Q. Iman, what does your friends think about the Americans?
A. I don't know.

Q. Have you ever talked to them about that?
A. No.

Q. Who is Hibba?
A. My uncle's wife.

Q. She was married to Rasheed?
A. Yes.

Q. Are you a Sunni or a Shiite?
A. Sunni.

Q. And what do you think about Shiites?
A. I don't think anything.

Q. Do you know the difference between the American Army and American Marines?
A. No.

Q. Iman, do you know a lawyer named Khalid?
A. Yes.

Q. And how do you know him?
A. He's my uncle -- maternal uncle.

Q. And where does he live?
A. In Haditha.

Q. Did he live near your house?
A. Yes.

Q. How far away?
A. I don't know.

Q. Did you go to his house a lot?
A. Yes.

Q. Did you talk to him about what happened that day?
A. No.

Q. Not at all?
A. Yes.

Q. Are you sure?
A. Yes.

Q. You've had to talk to a lot of people about this haven't you?

INTRPTR: I'm sorry?

Q. You've had to talk to a lot of people about what happened?
A. No, I didn't talk.

Q. You talked to a lot of Americans about this?
A. Yes.

Q. How many times?
A. I don't remember.

Q. Did you talk to this man, Major Erickson, before?

INTRPTR: She said "you're pointing at him".

Q. Yes.
A. I remember -- Yeah, I talked to him once.

Q. Did you talk to other Marines or Soldiers?
A. I don't remember.

Q. Who else in your family did you talk to about this?
A. You mean from my grandfather's house?

Q. No, from the neighborhood?
A. I didn't talk to anybody.

Q. Did Hibba tell you things?
A. Hibba doesn't live with us this year. She lives with her family.

Q. But after this happened, did Hibba talk to you about this?
A. No.

Q. Not at all?
A. Yes.

Q. What are some of the things that you like to do for fun?
A. She doesn't like it.

Q. I'm sorry. What was the answer?

INTRPTR: She said "she doesn't like it".

Q. Do you like to watch TV?
A. Yes.

Q. What do you like to watch?
A. Episodes, cartoons and read the Koran.

Q. Okay. Did you see yourself on TV?
A. One time.

Q. And who was talking to you for the TV?

INTRPTR: I'm sorry?

DC: Could you repeat that for her again please.

DC [LtCol Vokey]: Okay.

Q. Who was talking to you when they interviewed you for the TV?
A. I don't know.

Q. Who was with you?
A. My maternal uncle.

Q. Khalid?
A. Yes.

Q. And your brother was there?
A. Yes.

Q. And who else was there?
A. Just my brother and Khalid and my cousin, just one cousin.

Q. Which cousin?
A. Mohammed Mujeed (ph).

Q. Okay, Iman. Before that day when your family was

killed, had you lost any other family members before that?
A. No.

Q. And did you have anybody in your family who was ever detained?
A. No.

Q. How about Rasheed? Was Rasheed ever retained?
A. No.

Q. All right, Iman. Were you scared that day?
A. You mean, when they killed us?

Q. Yes. When the bomb went off and the Marines came in your house?
A. Yes, I was scared.

Q. Did you hide?
A. Yes.

Q. Did you cover your face?
A. Yes.

INTRPTR: I'm sorry. I'm just going to ask -- I said "cover her eyes".

DO: He may not have interpreted correctly --

DC [LtCol Vokey]: That's fine. Cover her eyes, that was actually the question.

Questions by the prosecution (continued):

Q. Iman, did anybody in your house have a rifle or a weapon?
A. No.

Q. Are you sure?
A. Yes.

Q. Is there any reason why Hibba said there was a weapon in there?

INTRPTR: Did you say Hibba?

DC [LtCol Vokey]: I did.

DO: You need to translate what you just said.

INTRPTR: "No. We don't have weapons".

Questions by the defense (continued):

Q. But Hibba said you did. Is she wrong? Is she lying?
A. I think she was lying. We don't have weapons.

Q. Who was firing on the Marines from outside your house?
A. It wasn't anyone.

Q. Did you hear any firing?
A. No.

Q. Are you sure?
A. Yes.

Q. You didn't hear any firing at all at the Marines?
A. No.

Q. Was anybody in your house going outside to look at the Marines on the road?
A. No.

Q. There's a door in your living room that goes outside, yes?
A. Yes, sure.

Q. No one in your house walked out that door to look at the Marines?
A. No. They broke the door and entered you, couldn't go.

Q. Are you okay? Do you need a break?
A. No. Let's just finish.

Q. What do you think of Americans?
A. You mean Marines?

Q. No, just Americans?
A. I don't know.

Q. Do you know what Disneyland is?
A. What do you mean?

Q. Do you know who Mickey Mouse is?
A. No.

DO: Counsel, the interpreter just told me that there's a name he pronounced in Arabic, and he did not use that name.

Would you like for him to ask the question --

DC [LtCol Vokey]: Please.
A. I didn't see a lot, but I know.

Q. You are very brave for coming here. Are you scared to be here?
A. No.

Q. And do you think everybody in this room will keep you safe?
A. I don't know.

Q. You don't know? Have you ever been to the U.S.?
A. No.

Q. Do you want to go?
A. No, I have school.

Q. Do you like school?
A. Yes.

Q. What's your favorite thing in school?
A. Just my friends. I do not have friends in Al Asad that's close to me. We don't even have a phone to talk to each other.

Q. Did anybody ask you if you wanted to come to the United States?
A. I don't know.

Q. Nobody asked you?
A. No.

Q. Have you ever seen the ocean?
A. Yes.

Q. Where?
A. Here in Al Haglanyah.

Q. Well, maybe some day you can come to the United States.
A. I don't know.

Q. Are you afraid to come to the United States, or you just

don't want to leave home?
A. I do not want to leave my house.

Q. Do you remember when you were on TV?
A. When I appeared on TV?

Q. Yes.
A. No.

Q. Do you like computers?
A. I like it, but I don't know how to use it.

Q. I have a computer here, and it has when you were on TV.
A. Yeah. My maternal uncle's house, they have a computer at their house and they showed me.

DC [LtCol Vokey]: I'm going to show the witness something.

DO: Counsel, do you want the official video to also be recording the --

DC [LtCol Vokey]: Ma'am, that's -- that sounds like it's necessary. We can put into the record. It's part of the discovery that we offered and we can -- I'll figure out some way we can insert it into the deposition record.

DO: Okay. Could you, just for the record, identify the video, or do you know anything about when it was taken and what channel it was from?

DC [LtCol Vokey]: This is a broadcast of CNN. I don't have the time, actually, when it was broadcast, I don't know off hand. I have got all of that back at Camp Pendleton.

TC [Maj Erickson]: Why don't we ask that they offer that as a deposition exhibit.

DC [LtCol Vokey]: I will. I will do that as soon as I can get the actual way to capture it.

DO: Can I identify it as Exhibit 2?

DC [LtCol Vokey]: That's fine, ma'am.

TC [Maj Erickson]: And also, there's a transcript that goes with that, sir?

DC [LtCol Vokey]: There is -- I can get it. I guess I can just offer the transcript too, that's fine. I can do that today.

Okay. I'm going to show you what's been marked -- what I am showing is the 37th [inaudible] of the CNN video that has been provided in the discovery.

I'm going to play part of the TV when you were on there; okay?

Do you think you can translate it as I play it? Let me go back.

For the record, I want to just play part of the video. You can't hear it very well, but you have the English translation at the same time, so I want to have the interpreter break it up in pieces, read back in Arabic to the witness what was said to verify that's what's on there.

Just tell Safah that we are going to play the video and go --

INTRPTR: Iman.

DC [LtCol Vokey]: I'm sorry -- Iman that we are going to go over the video and the translation back to her; okay?

The interpreter did as directed.

DC [LtCol Vokey]: We probably have to break it up.

Video: "The intriguing variation in Iman's account the third time she tells it, she says she was expecting the bomb".

WIT: Yes.

Video: "Planning to go to school, I was about to get out of bed. I knew the bomb would explode --"

WIT: Yes.

Video: "-- so I covered my ears, the bomb exploded."

WIT: No.

DC [LtCol Vokey]: She said she did not say that?

WIT: No.

DC [LtCol Vokey]: Okay.

Video: "The bomb struck an armored vehicle. I don't know if it was a HMMVW --"

WIT: It hit a vehicle?

DC [LtCol Vokey]: Did she say that?

WIT: No, I didn't say that.

Video: "-- or an armored vehicle. When the bomb exploded, it came straight to our house."

INTRPTR: "I said when the bomb exploded, they came to your house." She is asking "who are 'they'".

DC [LtCol Vokey]: I'm just asking you if that's what she said.

WIT: The bomb exploded in our house. The IED exploded outside.

DC [LtCol Vokey]: Okay.

Questions by the defense (continued):

Q. Iman, did you know there was a bomb out in the road?
A. No.

Q. Are you sure?
A. Yes.

Q. You didn't see anybody digging out in the road?
A. No.

Q. Did anyone in your family see them put any of the bombs in the road?
A. If they saw somebody, I don't know.

Q. Did Hibba tell you anything about that?
A. No.

Q. Not uncle Rasheed?
A. No.

Q. Are their any people in your neighborhood that you are

afraid of?
A. No.

Q. On that day, were there mujahideen in the neighborhood?
A. I don't know.

Q. Okay. Have you ever seen any mujahideen in the neighborhood?
A. I don't know these things.

Q. You don't know of any mujahideen ever in your neighborhood?
A. No.

Q. Have there been other bombs in the road that -- for the Marines?
A. I don't know.

Q. You don't know of any?
A. No.

Q. Iman, are you angry with Marines for what happened to your family?
A. Yes.

Q. Yes? And have any of your friends talked about this?
A. No.

DC [LtCol Vokey]: That's all the questions I have. Thank you.

DO: Counsel, do you have any questions that you want to interpose?

TC [Maj Erickson]: Yes, ma'am.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Iman, you said earlier to Lieutenant Colonel Vokey that they broke down the door to the outside. Do you remember saying that?
A. You mean, the living room?

Q. Yes.
A. Yeah. They broke the one that takes us outside.

Q. Okay. When you say "they broke it down," do you know

who broke it down?
A. No.

Q. Did you see the door get broke down?
A. Yes.

Q. Was the door broke down before or after your uncle Jaheed was shot?
A. I don't remember.

Q. Did it get broke down before or after the bomb in the room went off?
A. The door?

Q. Yes.
A. After the bomb.

Q. Did light come through that door?
A. I don't know.

Q. Was it daylight outside?
A. Yes.

Q. Could you see in the room that you were in? Could you see everything in the room?
A. Yes.

Q. Was it smoky?
A. No.

TC [Maj Erickson]: Permission to approach the witness?

DO: You may proceed.

Q. Iman, I'm going to show you a picture; okay? Can you look at this picture, and tell me if this looks familiar.

The witness perused the document.

WIT: I have never seen that before.

Q. You have never seen this before?
A. That's when the event happened; right?

Q. I am asking you.
A. Yes, I have seen it.

Q. Do you know who the man is against the wall is in that picture?
A. Yes, uncle Jaheed.

Q. That's uncle Jaheed?
A. Yes.

Q. Can you see the two people all the way in the back of that picture?
A. That's my mom, that's my brother.

Q. Okay. Now, is that approximately where they were when the Marines came in that room?
A. Yes.

Q. Is that where they were when the bomb went off in that room?
A. Yes.

Q. Where were you at in that picture, if at all?
A. I'm right there.

TC [Maj Erickson]: The witness is pointing between a man and a boy against the wall on the right part of the picture.

Hold it up and point for me.

The witness indicated.

Q. And were you seated there?
A. Yes.

Q. And where was your other brother?
A. He was next to me.

Q. Was he closer to your uncle than you, or were you closer to your uncle?
A. He was closer to him.

Q. Okay. And you said earlier when you felt something on your leg and you were bleeding, is that where you were when you were bleeding?
A. Yes.

TC [Maj Erickson]: I would like to introduce this as Deposition Exhibit 3; and it is photo number 0078. It has been previously provided to the defense.

DO: Thank you.

Q. When you said that the Marines came back in and shot your uncle Jaheed, was your mom and brother in that location when you came in?
A. Yes.

Q. And were they still alive when they came in?
A. I don't remember.

Q. And when you said earlier -- you said you saw two Marines shooting at a door. Was your mom and brother in that same location when they were shooting in from the door?

DC [LtCol Vokey]: I'm going to object to a leading question. The witness has testified that four or five were in this room earlier.

TC [Maj Erickson]: She said two, sir. We can read it back if you want to.

DO: Do you want to rephrase the question, or do you want to ask it again?

TC [Maj Erickson]: I want to ask it again.

DO: Okay.

Questions by the prosecution (continued):

Q. Do you remember earlier in your testimony that you said two Marines were shooting from the door?
A. Yes.

Q. Okay. Was your mom and brother in that location when they were shooting from the door?
A. Yes.

Q. And after those two Marines left, was your mom and brother alive?
A. I don't remember.

Q. Iman, when you said the two Marines were shooting from the door, did you ever see them go past the door and into the room?
A. Yes.

Q. They both came inside the room?
A. Yes.

Q. And you were able to see them?
A. No.

Q. You didn't see them come into the room?
A. I don't remember.

Q. Okay. Besides the people you named earlier that was inside your house, was there any other Iraqis or other Arab people inside your house that day?
A. I don't remember.

Q. Did any of your uncles fire at the Marines when they came to your house?
A. No.

Q. Did your dad?
A. No.

Q. Did your grandpa?
A. No.

TC [Maj Erickson]: I'll pass the witness.

DC [LtCol Vokey]: I'm going to object to that last question. She's already stated that she didn't see her father in the other room. The witness -- there's a foundation here.

DO: Counsel, did you have any questions, though, that you wanted to ask?

DC [LtCol Vokey]: Yes, ma'am.

RECROSS-EXAMINATION

Questions by the defense counsel:

Q. Iman, what I have here is a transcript from one of the times that they interviewed you.

INTRPTR: She doesn't understand.

DC [LtCol Vokey]: Okay. This was from August of last year; okay?

TC [Maj Erickson]: Sir, I don't mean to interrupt, but that's

actually a second translation of interview she already made in January. Is that the one [inaudible]?

DC [LtCol Vokey]: It is.

TC [Maj Erickson]: Yeah. When he was in court he wanted it translated. So we had him retranslate everything that he had translated prior.

DC [LtCol Vokey]: Okay.

Questions by the defense (continued):

Q. This was from January last year when you talked with Major Erickson. And he asked you, were any Marines shooting rifles in that room.
A. I don't remember.

Q. In your answer, you said they did not come in all the way into the room, only the muzzles of their automatic weapons were visible?
A. Yes.

Q. Did you say that?
A. I don't remember.

Q. But they talked to Major Erickson last January.
A. I remember I talked to him once.

Q. So the Marines did not come all the way into the room?
A. No.

Q. And you could only see the ends of the gun underneath the room [sic]?
A. Yes.

Q. Now, you said that Hibba ran out of the house with your little sister.
A. Yes.

Q. And she ran out before the grenade went off in the room?
A. No, it exploded.

Q. Did she leave after it exploded?
A. Yes.

Q. Okay. I want you to show me what door she ran out of.
A. This one.

DC [LtCol Vokey]: Let the record reflect that the one she's indicated has two circles.

Q. Okay. Is that the door that goes outside?
A. No. That doesn't take you outside. It leads to that hallway and then to the outside.

Q. So she ran towards the Marines out of the room?
A. No, to my uncle's house.

Q. And when did Rasheed leave the house?
A. After an hour perhaps.

Q. And what door did Rasheed go out of?
A. From the hallway's door.

Q. The same door that Hibba left?
A. Yes.

DC [LtCol Vokey]: That's all I have.

Thank you, Iman.

DO: Did you have any follow up questions, counsel?

TC [Maj Erickson]: Yes, ma'am.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Iman, when Rasheed left the house, did you see him leave out of that door?
A. Yes.

Q. And could you tell whether or not he was wounded at all?
A. Yes, I remember.

Q. Was he?
A. Yes.

Q. Do you know where?
A. Yes. In his forehead.

Q. Did you see how he got wounded?
A. No.

TC [Maj Erickson]: That's all I have got.

DO: Is the witness subject to recall?

TC [Maj Erickson]: Yes, she is.

DO: Okay.

TC [Maj Erickson]: I don't know how effective of a recall it is, but it is subject to her.

DO: Are there any other witnesses that you want to examine?

TC [Maj Erickson]: Yes, ma'am.

DO: Okay. This concludes the deposition of Iman Waleed Abid Alu Hameed.

The time now is 1432.

Thank you very much for your testimony.

Did you tell her that she is subject to recall?

The interpreter did as directed.

WIT: You mean in here?

TC [Maj Erickson]: Yes.

DO: Yes.

WIT: Like the first meeting or after that?

TC [Maj Erickson]: It will be Saturday.

DO: Saturday.

WIT: I will probably go to the dam on Saturday. On Saturday we don't have school, but I might go.

TC [Maj Erickson]: Let's do it Saturday.

DO: Okay, Saturday.

Thank you very much again, for your testimony.

We are off the record.

The deposition recessed at 1432, 21 February 2008.

The deposition opened at 1522, 21 February 2008.

DO: We are on the record. Counsel for the prosecution has asked that the translator mark in red on Deposition Exhibit 1, what the American numeric equivalent is of the Arabic numbers that are on the deposition. And so we will count at our next break.

I'm going to have the translator go back over the video just to confirm it as he goes through and makes the translation.

Is that acceptable for the parties?

TC [Maj Erickson]: Yes, ma'am.

DC [LtCol Vokey]: We may want to review it as well, ma'am --

DO: Okay. That's fine.

DC [LtCol Vokey]: -- just before they mark them and make them --

DO: Okay. You are saying before the markings are made on paper?

DC [LtCol Vokey]: Yes, ma'am. Just to ensure that they won't add something that wasn't part of the testimony.

DO: Okay. And we are off the record.

The deposition recessed at 1523, 21 February 2008.

The deposition opened at 1525, 21 February 2008.

DO: We are on the record.

This deposition in the case of *United States versus Staff Sergeant Frank D. Wuterich, United States Marine Corps* will come to order.

The time is 1525 on 21 February 2008 at CMOC FOB, Haditha, Iraq.

Before we proceed, are there any issues or matters as to the competency of the accused?

DC [LtCol Vokey]: No, ma'am.

DO: My name is Colonel Kathleen Henderson. I am the deposition officer and a judge advocate certified and sworn under Article 27(b) and 42(a). I have not acted in any disqualifying capacity.

The consolidated disposition authority, Lieutenant General S. A. Helland III, directed this deposition by his appointing order dated 1 February 2008.

I am ready to proceed, and I have received a copy of the appointing order.

The following persons in addition to myself are present:

Major D. J. Erickson, TRIAL COUNSEL;
Captain C. P. Hur, TRIAL COUNSEL.
Lieutenant Colonel C. Vokey, DEFENSE COUNSEL;
Captain N. Bonner, DEFENSE COUNSEL.
Staff Sergeant Jordan, court reporter who has previous been sworn;
Sajid Al-Hussain, the interpreter.

And I also note that both sides have their own -- the government and the defense have their own translator or interpreter respectively.

Sajid Al-Hussain is the court reporter [sic] and is now being sworn.

The interpreter was duly sworn.

TC [Maj Erickson]: Ma'am, he's actually the interpreter, not the court reporter.

DO: Thank you.

Counsel, please state your qualifications.

TC [Maj Erickson]: Yes, ma'am. My name is Major Daren Erickson. I also have with me Captain Chris Hur. We are both certified and qualified under 27(b) and 42(a); sworn and we have not done anything to disqualify us.

DO: Thank you.

DC [LtCol Vokey]: Ma'am, I am Lieutenant Colonel Colby Vokey. I am the detailed defense counsel. I am sworn and certified under Article 27(b) and 42(a). And I have

with me Captain Nute Bonner, who is the individual military counsel and he is also similarly sworn and qualified.

DO: Okay. And will you represent that both of you have not acted in any disqualifying capacity.

DC [LtCol Vokey]: Yes, ma'am.

DO: Thank you.

A copy of the appointing order has been served on the defense counsel by trial counsel.

I understand that the accused is not here; but I wanted to state for the record that I am not an accuser in any way. To the best of my knowledge, I have not acted in any disqualifying manner.

What you need to know before we proceed is that I am currently the assistant SJA for MNF West Fallujah, Iraq; and I am responsible for command investigations.

I am in the United States Marine Corps Reserve, and I was activated in December of 2007. Before my activation, I have been in private practice as a litigation attorney representing businesses with our law firm in Nashville, Tennessee. Prior to that, I was an attorney with the Solicitors Office, U.S. Department of Labor. Before that, I was a law clerk to a U.S. Magistrate. And before that is when I went law school.

I have never served as a trial or defense counsel for any command, and I have been JAG certified since 1992. I am also the deposition officer in the related cases of *United States versus Chessani and Tatum.*

Hearing this information and understanding it, do you, the accused or counsel, wish to voir dire me or challenge me further before we proceed?

DC [LtCol Vokey]: No voir dire or challenge.

DO: Does the government wish to voir dire or challenge me?

TC [Maj Erickson]: No, ma'am.

DO: The purpose of this deposition is to take and preserve

the testimony of Iraqi national witnesses for trial. By "preserve" that means that we will take the testimony of a witness under oath, and in a manner that would most likely be used at a court-martial.

This deposition may also serve as a discovery device to allow the parties to learn more about the strengths, weaknesses and witnesses in their respective cases.

Do you, counsel for the accused, understand the purpose of this deposition?

DC [LtCol Vokey]: I do.

DO: Okay. For the record, the accused does have certain rights at this deposition. They are specifically under the Rules for Court-Martial, Rule 702. The first is to be present except when without good cause, you fail to appear after notice, you were disruptive, the deposition is ordered instead of production of a witness on sentencing, and the authority ordering the deposition determines the interests of the parties and the court-martial can be adequately served by an oral deposition without the accused's presence.

And the accused also has the right to be represented by a counsel.

Counsel for the accused, does the accused understand these rights? Has he been informed?

DC [LtCol Vokey]: Yes. He understands his rights.

DO: The accused has a right to be represented by a military counsel at no expense to the government. The accused also has the right to civilian counsel of his choosing and the expense would be borne by the accused.

I understand that the accused is being represented by government counsel, and you previously indicated, Lieutenant Colonel Vokey, that he was also being represented by civilian counsel; is that correct?

DC [LtCol Vokey]: That's correct, ma'am.

DO: The civilian counsel have been invited to attend at their own expense, but they are not voluntarily attending; is that correct?

DC [LtCol Vokey]: Yes, ma'am. And the same statement applies for the first deposition of Iman as today as to the counselors.

DO: Okay. And that is dually noted for the record.

I will now explain how the depositions of the witnesses shall proceed. Each witness is getting an oral deposition, which shall be examined under oath. The sole manner of the examination and cross-examination shall be such as would be allowed in the trial itself.

The government shall make available to each accused for examination and use at the taking of the deposition, any statement of the witness which is in the possession of the United States and to which the accused would be entitled to at trial.

Regarding objections in general, a failure to object prior to the deposition to the taking of the deposition on grounds which may be corrected if deposition is made prior to the deposition, waives such objection.

Objections to questions, testimony or evidence at an oral deposition and the grounds for such objection shall be stated at the time of taking such objection and at the time of taking such deposition.

If an objection relates to a matter which could have been corrected if the objection had been made during the deposition, the objection is waived if not made at this time of the deposition.

At this time, are there any questions from either parties?

TC [Maj Erickson]: No, ma'am.

DC [LtCol Vokey]: No, ma'am.

DO: Government, are we ready to proceed?

TC [Maj Erickson]: Yes, ma'am.

DO: Okay. I believe that we are calling Abdul Rahman Waleed Abdul Hameed.

TC [Maj Erickson]: That's correct, ma'am.

DO: Please bring in the witness.

Just for the record, counsels, are we going to have continuing deposition exhibits, or are we going to have different ones? In other words, I would note for the pictures, we are going to start a new set of exhibits?

The witness entered the courtroom.

DO: Please explain to the witness that I will be asking questions, and the attorneys will be asking questions and that you will be translating.

The interpreter did as directed.

DO: And please explain that we don't want to talk over one another. So if one of the attorneys, while he is speaking, states an objection or starts to talk, please ask him to stop. The court reporter right here is trying to take down what everybody is saying, so we do not want you talking over one another. So if he hears one of the attorneys start to talk, please stop, and we will proceed.

The interpreter did as directed.

DO: Ask him if he understands.

WIT: I do.

DO: Please tell him that it's very important for him to speak as loudly as possible so that the court reporter and the camera microphone can take down everything that he is saying.

The interpreter did as directed.

DO: Please tell him to let you finish with the question before he starts to give the answer.

The interpreter did as directed.

DO: And if he does not understand, please indicate that he doesn't understand, and we will repeat the question.

The interpreter did as directed.

DO: Now, we will administer the oath.

Abid Al Rahman Waleed Alu Hameed, Iraqi civilian, was called as a witness by the prosecution, was duly sworn, and testified substantially as follows:

DO: Counsel, are you ready to start your questions?

TC [Maj Erickson]: I am, ma'am.

DO: Thank you.

DIRECT EXAMINATION

Questions by the prosecution:

Q. Abdul, how old are you?

INTRPTR: He has to say his full name like Abdul Rahman.

TC [Maj Erickson]: Okay.

Q. Abdul Rahman, how old are you?
A. Ten years old.

Q. Do you know your birthday?
A. No.

Q. Where do you live right now?
A. At the dam.

Q. And who do you live with?
A. With my uncle's family.

Q. Do you live with your mom and dad?
A. No.

Q. And why not?
A. They're dead.

Q. Do you remember the day they died?
A. Yes.

Q. Do you know what day that was?
A. No.

DO: Would you please ask the witness to make sure that he says the answer that -- he can nod, but make sure he says the answer orally.

Enclosure 8:

Video Deposition of
Abid Al Rahman Waleed Al-Hameed

* DVD Video will be sent Via FedEx due to the large size of the video.

Abid Al Rahman Waleed Alu Hameed, Iraqi civilian, was called as a witness by the prosecution, was duly sworn, and testified substantially as follows:

DO: Counsel, are you ready to start your questions?

TC [Maj Erickson]: I am, ma'am.

DO: Thank you.

DIRECT EXAMINATION

Questions by the prosecution:

Q. Abdul, how old are you?

INTRPTR: He has to say his full name like Abdul Rahman.

TC [Maj Erickson]: Okay.

Q. Abdul Rahman, how old are you?
A. Ten years old.

Q. Do you know your birthday?
A. No.

Q. Where do you live right now?
A. At the dam.

Q. And who do you live with?
A. With my uncle's family.

Q. Do you live with your mom and dad?
A. No.

Q. And why not?
A. They're dead.

Q. Do you remember the day they died?
A. Yes.

Q. Do you know what day that was?
A. No.

DO: Would you please ask the witness to make sure that he says the answer that -- he can nod, but make sure he says the answer orally.

ENCLOSURE (9)

The interpreter did as directed.

DO: Counsel, you may continue.

TC [Maj Erickson]: Yes, ma'am.

Q. Do you remember how they died?
A. No.

Q. Do you remember what you were doing the day they died?
A. No.

Q. Do you remember where you lived the day they died?
A. In our house.

Q. And where is your house?
A. In Haditha.

Q. And who all lived in that house?
A. My mother, father, grandma and my little brother.

Q. Anybody else?
A. My uncle Jaheed, my sister, Iman, my uncle Rasheed and that's it.

Q. What about your grandmother, where does she live?
A. With us.

Q. And is your grandma or grandpa alive right now?
A. No, they are dead.

Q. Do you know how they died?
A. No.

Q. Do you remember when they died?
A. No.

Q. Without your uncle Jaheed? Is he still alive?
A. No, he's dead.

Q. Do you remember when he died?
A. Yes.

Q. Do you remember where he died?
A. With us in the living room.

Q. Did you see how he died with you in the living room?
A. They shot him, he died.

Q. Who is "they"?
A. The Americans.

Q. How did you know they were Americans?
A. From their uniforms.

Q. Had you seen Americans in uniform prior to that day?
A. No.

Q. How many Americans were there?
A. Many of them. A lot of them came to the house.

Q. How many of them came in the room with you?
A. Two.

Q. What did they do when they came in the room?
A. They started shooting at us.

Q. Who was all in the room when they were shooting?
A. All of us -- just my dad, he was praying and they came and they shot him.

DC [LtCol Vokey]: Objection. It lacks foundation. Obviously, he's perceiving this.

DO: The objection is noted.

Q. Abdul Rahman, who was in the room with you and your uncle Jaheed?
A. All of us. Just my dad was praying and they shot him.

Q. Okay. When you say "all of us," name who was in that room.
A. Jaheed, my mother and my grandmother, my little brother Abdullah and me and Iman, uncle Rasheed and that's it.

Q. Where was your grandpa?
A. He was with us. He was sitting at the bed and they shot him.

Q. When you say "the Americans shot them," did you see them point anything at any of your family members?
A. Yes.

Q. And who did you see -- what did you see them pointing?
A. They came behind the wall, they turn and they started firing at us.

Q. And how many were there again?
A. Two.

Q. Do you know what a rifle is?
A. No.

Q. Do you know what a gun is?
A. No.

Q. So what were they shooting?
A. They were firing bullets.

Q. You said your mom was in the room with you. Do you know what happened to her?
A. No.

Q. Do you know how she died?

DC [LtCol Vokey]: Objection. Answered.

WIT: No.

Q. Were you hurt?
A. Yes. Here, in my back.

Q. Do you know how you were hurt?
A. The bullets came towards us.

Q. Where was your brother?
A. He was sitting next to my mom.

Q. And did he get hurt?
A. No -- I don't know.

Q. Did you see two Marines come into the room?

DC [LtCol Vokey]: Objection. He didn't say "Marines".

Q. Did you see the two Americans come into the room?
A. Yes.

Q. Do you remember hearing anything but shooting in the room that day?
A. No.

Q. Did you hear an explosion at all that day?
A. In the morning when we first woke up there was firing and an explosion.

Q. And did you see the explosion?
A. No.

Q. Was it inside your house or outside your house?
A. Outside the house.

Q. And where were you when you heard that explosion?
A. I was sleeping, and when the explosion happened I woke up.

Q. What did you do after you woke up?
A. We walked around the hallway and we heard gunshots, then we went inside the living room, they knocked on the door and they came in.

Q. Who came in?
A. The Americans.

Q. Did any of your uncle's go outside of the house?
A. No.

Q. Did your dad?
A. No.

Q. Did your grandpa?
A. No.

Q. When the Americans came in the house, did anyone inside the house shoot at them?
A. No.

Q. Did anybody inside the house have a gun?
A. We had one, but they took it.

Q. Who took it.
A. The Americans.

Q. And where did they get it?
A. From the house.

Q. Who had it?
A. We had it.

Q. Who did it belong to?
A. I don't know.

Q. Did you hear any explosions inside your house that time?

DC [LtCol Vokey]: Objection. That's loading.
A. No. But when we went inside the living room, they threw a sound bomb.

DO: Is that what he said?

INTRPTR: Yes.

DO: Anything else he said after that?

Q. And after the sound bomb, did it make a big noise?

INTRPTR: I'm sorry?

Q. When they threw the sound bomb, did it make a big noise?
A. Yes.

Q. And were you in that room when you heard it go off?
A. Yes.

Q. Did it cause a lot of smoke?
A. Yes.

Q. Did you see anybody come into the room after you heard the noise?
A. No.

Q. When did you see the two Americans come in the door? Before or after the big noise?
A. They came after the sound and before.

Q. When did the Americans come in shooting? Before or after the big noise?
A. After the noise -- sound.

Q. What did they do after they came in the room after the big noise?
A. They just started shooting.

Q. And what did they do after they were done shooting?
A. They finished, they came and they took us and put us in the cars, and they took us to the hospital.

Q. How long after they were done shooting did they take you to the cars?
A. Just -- not long.

Q. Did they leave and then come back to get you?

A. Yes.

Q. Did anybody from your family leave the house after they were done shooting?
A. Yes.

Q. Who?
A. My uncle Rasheed.

Q. And how did he leave?

INTRPTR: He said, "Is there any bullets in my head. He said yeah, there is a little."

Q. And do you remember how he left? Did he leave out of a door?
A. No.

Q. Did anybody else leave that room?
A. No.

Q. When the Americans came in shooting, do you remember where you were at in the room?
A. No.

Q. Were you sitting down?
A. Yes.

Q. Were you sitting on the floor?
A. Yes.

Q. Was anybody by you?
A. Yes.

Q. Who?
A. My sister, Iman.

Q. Was there anybody by Iman?
A. I don't know.

Q. When the Americans were in the room shooting, did you see anything in their hands?
A. No.

Q. Were they pointing at anybody?
A. No.

Q. So what were they shooting at?

A. At everybody -- all of us.

Q. Do you know who they were shooting first?
A. My dad.

Q. Did you see that?
A. No.

Q. Do you know who they were shooting second?
A. No.

Q. How about last? Who did they shoot last?
A. Us -- the last ones were us.

Q. Who is "us"?
A. The one that was sitting on the floor, me, Iman and my mother.

Q. Did you see when they were shooting at your mom?
A. No.

Q. You said earlier that your dad was praying in the room. Do you know what room that was?

DC [LtCol Vokey]: Objection. It lacks foundation because he didn't see it happen.

WIT: Our room where we were sleep at.

DO: Okay. Please remind him, the witness, that when one of the attorneys starts to talk, he needs to wait.

The interpreter did as directed.

DO: Counsel, you may proceed.

Questions by the prosecution (continued):

Q. What room was your dad praying?
A. Our room where we sleep in.

Q. Is that the same room that you were in when you saw the Americans shooting?
A. No.

DC [LtCol Vokey]: I'm going to go ahead and object to that little question and answer because, obviously, it lacks foundation. He didn't actually witness his father in

the room.

Q. If he wasn't in the same room with you, how do you know he was in the room praying?
A. Because, you know, when he first got shot, we went to the room and we saw him -- he had his praying rug, so we know that he was praying.

Q. Okay. When did you go to that room?
A. The Americans they left for a little, they came back and then we went to him. We went --

Q. When you say that -- I'm sorry. Say that again.

INTRPTR: "We went to him at the scene."

Q. Who is "we"?
A. You mean, the one that was sitting in the living room?

Q. No. You said you went in to see your dad, and you said "we". Who is "we"?
A. The one that went to see him?

Q. Yes.
A. Me and my grandma, Iman and uncle Rasheed and uncle Jaheed.

Q. And what did you see when you went into that room with all of those people?
A. I saw my dad dead.

Q. And then where did you go after that?
A. We went to the same place.

Q. And what's the "same place"?
A. The living room.

Q. And what happened after you went back into the living room?
A. Then they came, killed us and they started shooting.

Q. Who is "they"?
A. The Americans.

Q. And how many?
A. In the room?

Q. Yes.

A. Two.

Q. Do you know who Hibba is?
A. My uncle's wife.

Q. And was she there that day?
A. Yes.

Q. And where was she?
A. Sitting with us, and then when the shooting erupted, she took my little sister and left.

Q. Do you know who's your little sister?
A. Her name is Asya.

Q. And did you see Hibba and Asya leave?
A. No.

Q. Prior to the Americans coming in that room and shooting, have they been in that room before?
A. Where my father was.

Q. No. The living room where you were in?
A. No.

Q. After the shooting, did the Americans come back?
A. No.

Q. You said earlier you were taken to a car and taken to a hospital. Who put you in the car?
A. The Americans.

Q. And where did they found you?
A. At the house.

Q. And was that after the shooting?
A. When I got shot.

Q. How many Americans came and got you out of the house?
A. Two.

Q. Was it the same two?
A. No.

Q. Other than the two Americans shooting and the two Americans that came and got you, had there been any other Americans in that room?
A. No.

Q. After the big noise bomb went off, you said there was smoke?
A. Yes.

Q. And did the two Americans come in shooting after the big noise and the smoke?
A. You know, it was the sound bomb, and then after that they threw the sound bomb, then they started shooting.

Q. And you were actually able to see with your eyes two Americans shooting?
A. Yes.

Q. How far away were they?
A. Not too far.

Q. And you could see them clearly?
A. Yes.

Q. Was it light? Was there a lot of light?

INTRPTR: I'm sorry. When you say "there" I have to be specific.

Q. Was there a lot of light in your room?
A. No. Not too much.

Q. You said earlier there was a weapon in your house?
A. Yes.

Q. And you said the Americans took it?
A. Yes.

Q. Do you remember when they took it?
A. No.

Q. Did you see them take it?
A. Yes.

Q. Where did they take it?
A. From our house.

Q. Do you know where in your house?
A. In our room.

Q. What room?
A. My dad and mom's room.

Q. Did they take it out the same day that your dad died?

A. You mean the gun?

Q. Yes?
A. No.

Q. Was it before the day that your dad died?
A. No.

Q. Did the Americans take the rifle, or did somebody from your family give it to them?
A. The Americans.

Q. Do you know where your mom and dad's room was that?

INTRPTR: Could you repeat the question.

Q. Do you know where your mom and dad's room is located?
A. Under the bed [sic].

Q. Was it the same Americans that came in shooting that took the rifle?
A. No.

Q. Was it the same Americans that came and got you and took you to the car?
A. No.

Q. The two Americans that was in your living room shooting, do you remember where they were in your room?
A. No.

Q. Do you remember what door they were in?
A. The living room.

Q. Did they come in from the doorway that opens inside of the house or the doorway that opens from the outside?

DO: Can you please repeat that so that the interpreter can hear it.

Q. Did the two Americans come into the door that opens into the house or into the door that opens into the outside?

TC [Maj Erickson]: I'll rephrase it.

Q. How many doors are in that room?
A. Two.

Q. Okay. And do you have a door that leads outside?
A. No.

Cpl Schulz: We need to change tapes, ma'am.

DO: Okay. We're off the record while he is switching tapes.

The deposition recessed at 1620, 21 February 2008.

The deposition opened at 1640, 21 February 2008.

DO: We are back on the record. I will remind the witness that we are still under oath.

The interpreter did as directed.

DO: Counsel, you may proceed.

TC [Maj Erickson]: Ma'am, the government passes the witness at this point.

DO: Counsel, do you have any questions to ask the witness?

DC [LtCol Vokey]: Yes, ma'am.

CROSS-EXAMINATION

Questions by the defense:

DC [LtCol Vokey]: Abdul Rahman, my name is Lieutenant Colonel Vokey, I am going to ask you some questions; okay?

Q. Do you speak English at all?
A. No.

Q. Not at all?
A. No.

Q. Do you remember being on TV?
A. No.

Q. And do you watch TV?
A. Yes.

Q. And what do you like to watch? Cartoons?
A. Yes.

Q. Do you remember when Iman was on TV?

A. No.

Q. No? Do you remember people with cameras coming and asking you questions about what happened?
A. No.

Q. Who was in the house next door to you?
A. [inaudible] house.

Q. And did you have other family or friends in the neighborhood?
A. No.

Q. No? Tell me about the bad people that were in your neighborhood.
A. Who are they.

Q. The insurgents or mujahideen.

DO: Counsel, I'm not sure if the witness understands the question. Did you want to --

Q. Abdul Rahman, do you know what mujahideen is?
A. Yes.

Q. And tell me when you seen them in your neighborhood.
A. I never seen them. I just hear about them.

Q. Well what did you hear?
A. I heard they said there was mujahideen and that's it.

Q. And who did you hear it from?

INTRPTR: I'm just going to ask him.

WIT: Half of them saying that.

DO: Repeat this for the counsel. He didn't hear what you said.

INTRPTR: He said "half of them are saying that".

DO: Half of them are saying that?

DC [LtCol Vokey]: Half of who?

Questions by the defense (continued):

WIT: Half of Haditha.

Q. So lots of people in Haditha talk about mujahideen?
A. Yes.

Q. And they were all over Haditha?

DO: What did he just say?

INTRPTR: I was telling him I want to hear you answer the question.

DO: Okay. Can you ask him to repeat his answer louder. Ask him to repeat --

INTRPTR: He doesn't know what I am talking about.

DO: Okay. Counsel, I think the witness doesn't understand your question. Can you repeat the question, please.

Questions by the defense (continued):

Q. What is mujahideen?
A. I don't know.

Q. And lots of people talk --

DO: He was trying to say something.

DC [LtCol Vokey]: Oh, I'm sorry.

DO: Continue.

WIT: I didn't say anything.

DO: Okay. That's fine.

Questions by the defense (continued):

Q. Did lots of people in Haditha talk about the mujahideen?
A. Yes.

Q. And mujahideen around your neighborhood and the house you used to live?

TC [Maj Erickson]: That's compound, ma'am.

DO: Did you want to rephrase that counsel?

DC [LtCol Vokey]: No.

DO: Then just repeat what he just said.

Questions by the defense (continued):

Q. Lots of mujahideen in the neighborhood where you live?
A. Not many.

Q. But some?
A. Yes.

Q. And where in your neighborhood?
A. In our area?

Q. In the area where you used to live.

DO: Ask him if he needs you to repeat the question.

The interpreter did as directed.

INTRPTR: He said, Yes.

DO: Okay. What was the question, court reporter?

Court Reporter: One moment, ma'am.

Question: "Where in your neighborhood? Answer: "In our neighborhood?"

Question: "In the area where you used to live. And you said, "Ask him if you would like for you to repeat the question."

Questions by the defense (continued):

Q. When I asked you about the neighborhood where you used to live, where were the mujahideen in that neighborhood?
A. In Al Supane (ph) area.

Q. Did you see any of them?
A. No, not a lot.

Q. Just some?
A. Yes.

Q. And did your family talk about mujahideen a lot?
A. Not a lot -- not a lot.

Q. Were your family scared of the mujahideen?
A. No.

Q. On the day that the Marines came to your house, did you see any of the ISFs there?

INTRPTR: I don't understand ISF.

DO: Counsel, excuse me --

DC [LtCol Vokey]: Iraqi Army.

DO: Could you repeat the question for the interpreter, please.

Questions by the defense (continued):

Q. On the day the Marines came to your house, did you see any of the Iraqi Army?
A. No, I didn't see them.

Q. Did you see any Iraqi Army people shooting?
A. No.

Q. Did you see the Marines shooting at the Iraqi Army?
A. No.

DO: Please ask the witness to speak up louder because we are having problems getting his voice on the camera.

The interpreter did as directed.

Q. Did any strangers come to your house that may have been mujahideen?
A. No.

Q. Have you heard who was firing at the Marines?
A. No.

Q. Have you heard who set the bomb that blew up the Marines' vehicle on the road?
A. No.

Q. Did you know about other bombs set in the roads for the Marines?
A. No.

DC [LtCol Vokey]: Hold on one minute.

DO: No problem.

Counsel conferred with co-counsel.

Q. When the Marines came into your house, were you scared?
A. Yes.

Q. Did you cover your eyes?
A. No.

Q. Did you hide?
A. Yes.

Q. Have you talked to a lot of people about this?
A. No.

Q. No? Have you talked to other Marines?
A. No.

Q. Do you remember talking to this man before -- Major Erickson? Do you remember talking to this man, Major Erickson before?
A. No.

Q. How about your family? Did you talk to anyone in your family about this?
A. No.

Q. Did -- how about Hibba? Have you talked to Hibba about what happened that day?
A. No.

Q. And do you know Khalid?
A. No.

Q. Do you have an uncle named Khalid?
A. Yes.

Q. Have you talked to him about what happened that day?
A. Yes.

Q. What does Khalid do?
A. He doesn't do anything.

Q. Does he have a job?
A. Yes.

Q. And what is his job?

DC [LtCol Vokey]: I'll ask another question.

Q. Is he a lawyer?
A. Yes.

Q. Is he an important man?
A. No.

Q. You remember speaking to the TV with Iman and Khalid?

INTRPTR: Can you rephrase the TV because I don't know if I can translate that.

DO: Did you hear that, counsel? The interpreter asked you to rephrase TV because it won't come out in translation. I presume you mean television?

DC [LtCol Vokey]: Yes.

Questions by the defense (continued):

Q. Do you remember talking with Iman and Khalid when they were filming with a camera like these?
A. No.

DC [LtCol Vokey]: All right. One minute.

Counsel conferred with co-counsel.

Q. Do you know how to use a computer?
A. No.

Q. No? I'm going to show you something on the computer; okay?

DO: Can you identify this on the record as the computer.

DC [LtCol Vokey]: Yes, ma'am. For the record, this is the -- this is the video that we showed with Iman. It's from the discovery provided by the government. And I will provide, you know, a transcript of this for the record.

DO: Thank you. That would be Exhibit 1.

DC [LtCol Vokey]: Exhibit 1 for sure.

DO: Okay.

The defense counsel played the video for the witness.

Questions by the defense (continued):

Q. Is that your sister?
A. Yes.

Q. And is that you next to her?

The defense counsel played the video for the witness.

Q. Is that you?
A. Yes.

Q. And who is this, the other person in the picture?
A. Which one?

Q. This man that is holding your shirt up?
A. I don't know.

Q. Okay. Where were you when this was happening?
A. I was at my uncle's house, and they came in and video taped us.

Q. And which uncle?
A. My uncle Sayed (ph).

Q. And who else was there?
A. You mean at my uncle's house?

Q. Yes.
A. My uncle Madeed (ph) and his family.

Q. Iman was there?
A. Yes.

Q. And Khalid was there?
A. No.

Q. No? Are you sure?
A. Yes.

Q. And who had the camera?

INTRPTR: You mean who was video taping?

DC [LtCol Vokey]: Yes.
A. I don't know.

Q. You don't remember, or you don't know who it was?
A. I don't remember.

Q. After the video taping, did you talk about it?
A. Yes.

Q. And what did you talk about?
A. Whatever I just said.

Q. And who were you talking with?
A. With a reporter.

Q. And did you see yourself on television?
A. No.

Q. But you knew you were going to be on television didn't you?
A. No.

Q. No? Did they ask you the questions before they video taped?
A. No. They saw my back then they asked me.

Q. And whose idea was it to be video taped by the reporter?

DO: Counsel, do you want to confirm if he knows the -- understands the question?

DC [LtCol Vokey]: Yeah. Maybe I need to ask again.

Q. Whose idea was it to do the video tape with the reporter?
A. I don't know.

Q. Are you worried you might say something wrong here today?
A. No.

Q. Are you afraid of being here?
A. No.

Q. And did anyone ask you if you wanted to come to the United States?
A. No.

Q. Do you feel safe right now?
A. Yes.

Q. You don't think anybody in this room would hurt you do you?
A. No.

Q. And we are here to protect you. Do you know that?
A. Yes.

Q. And have you ever been to the United States?
A. No.

Q. Would you like to some day, maybe travel with your family?
A. No.

Q. And why not?
A. I don't want to go.

Q. Just to visit, maybe see some fun things.

Abdul Rahman, are you curious as to what the United States is like?

INTRPTR: He doesn't understand the question. Let him rephrase it.

DO: He does not understand your question.

DC [LtCol Vokey]: Okay.

Questions by the defense (continued):

Q. Has anyone threatened you at all to come talk to us?
A. No.

Q. Not any mujahideen or anything like that?
A. No.

Q. Did Khalid ever talk to you about what happened?
A. Yes.

Q. And what did he talk to you about?

DO: Can you translate what he said so far.

INTRPTR: "About the --"

Q. Now, Abdul Rahman, you promised and you put your hand on the Koran that you promised to tell the truth didn't

you?
A. Yes.

Q. Okay. So what did Khalid talk to you about what happened?

INTRPTR: He's coughing, so I didn't understand.

DO: He coughing. You want to get him some water.

Questions by the defense (continued):

Q. Do you remember the question?
A. No.

Q. Okay. What did Khalid talk to you about what happened?
A. I don't know.

Q. Now, Abdul Rahman, you said that Khalid talked to you about this, and it's very important that we know what you talked about with Khalid.
A. I don't know.

Q. Okay. But you did talk to him about this?
A. Yes.

Q. Just tell me one little thing that you talked to Khalid about this?
A. I don't know.

Q. What did you talk to -- with Khalid about the video tape and the reporter?
A. I don't remember.

Q. Now, Abdul Rahman, did Khalid tell you not to say some things?
A. No.

Q. And are you sure?
A. Yes.

Q. Did anyone else tell you not to talk about certain things?
A. No.

DC [LtCol Vokey]: That's all the questions I have.

DO: Counsel, do I have any questions from you?

TC [Maj Erickson]: No further questions, ma'am.

DO: Is the witness subject to recall, counsel?

TC [Maj Erickson]: Yes, ma'am.

DO: Thank you very much for your testimony. Tell him he is subject to being recalled.

The interpreter did as directed.

DO: Thank you again.

Counsel, is it okay if we still stay on the record just to save time, so I won't have to go through the introductory this time.

DC [LtCol Vokey]: Ma'am, I absolutely agree.

DO: Okay. Thank you.

Is counsel ready to call the next witness, Safah Yunis Salim Rasif?

TC [Maj Erickson]: Yes, ma'am.

DC [LtCol Vokey]: Can we take a five minute break?

DO: Okay. That's fine.

The deposition recessed at 1720, 21 February 2008.

The deposition opened at 1800, 21 February 2008.

DO: We are back on the record in the deposition involving Iman Waleed Abdul Hameed. And we are on the record to confirm that the Court's interpreter, Sajid, has correctly marked the numbers 1, 4 -- excuse me -- 1, 2, 4, 5, 8 and 9 that were marked originally by the witness is Arabic.

The interpreter has marked them in red with the corresponding number in English on Deposition Exhibit 1.

Can we so stipulate, counsel for the prosecution?

TC [Maj Erickson]: Yes, ma'am.

DO: And counsel for the defense?

DC [LtCol Vokey]: Yes, ma'am.

DO: We are off the record.

The deposition recessed at 1802, 21 February 2008.

The deposition opened at 1803, 21 February 2008.

DO: We are back on the record. And I will remind the Court's interpreter and everyone that we are still in a continuation of a deposition in the case of *the United States versus Staff Sergeant Frank Wuterich*. And we are now calling the next witness.

I remind the Court's interpreter that he is still under oath and the court reporter has also been sworn in previously.

The next witness a Safah Yunis Salim Rasif.

Safah Yunis Salim Rasif, Iraqi civilian, was called as a witness by the prosecution, was duly sworn, and testified substantially as follows:

DO: Please understand that everything that you say is going to be interpreted by the interpreter, Sajid. It is very important that you not talk when someone else is talking because the court reporter over here, Staff Sergeant Jordan, is trying to take down everything that you are saying.

In the back of the room, we have the attorneys who will be asking you questions. From time to time, they may have a statement that they may want to make for the record. If they stop you while you are speaking, please, stop what you are saying and let them finish the statement, so they will be able to make their comment for the record. If you are not finished with your statement, please, make sure that you tell the interpreter that you are not finish, and we will let you finish what you are saying.

If you do not understand what the interpreter said, please, make sure that you let him know if you don't understand what he has said and we can repeat the question.

Enclosure 10:

Video Deposition of
Safah Yunis Salim Rasif

* DVD Video will be sent Via FedEx due to the large size of the video.

DO: And counsel for the defense?

DC [LtCol Vokey]: Yes, ma'am.

DO: We are off the record.

The deposition recessed at 1802, 21 February 2008.

The deposition opened at 1803, 21 February 2008.

DO: We are back on the record. And I will remind the Court's interpreter and everyone that we are still in a continuation of a deposition in the case of *the United States versus Staff Sergeant Frank Wuterich*. And we are now calling the next witness.

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If you do not understand what the interpreter said, please, make sure that you let him know if you don't understand what he has said and we can repeat the question.

Do you have any questions?

WIT: No.

DO: I believe you have a thing of water next to you, so if you need some water, please feel free to have some water.

Counsel are you ready?

TC [Maj Erickson]: Yes, ma'am.

DIRECT EXAMINATION

Questions by the prosecution:

Q. Safah, how old are you?
A. 1993.

Q. Do you know what month you were born in 1993?
A. The second month.

Q. How about day?
A. I don't know.

Q. And where do you live, Safah?
A. In Haditha in Supun (ph).

Q. And how long have you lived in Haditha?
A. When I was first born.

Q. Have you ever moved away from Haditha?
A. No.

Q. Have you ever been outside of Haditha on visits?
A. No.

Q. Safah, are you on any medication today?
A. No.

Q. Do you have any physical ailments?
A. No.

Q. Safah, has anybody told you what to say here today?
A. No.

Q. Have you been threatened at all prior to coming in here today?

A. No.

Q. Do you know the reason why you are here today?
A. For the case; right?

Q. And what is your understanding of what the case is about?

DO: Repeat what she said.

INTRPTR: She said "what".

Q. What do you think the case is about? What is your understanding of it?
A. The massacre of Haditha.

Q. Who do you currently live with, Safah?
A. With my grandfather's family.

Q. Do you live with your mom and dad?
A. No.

Q. Why not?
A. They are dead. I use to live with them.

Q. You said now they are dead?
A. Yes, of course.

Q. Do you remember the day they died?
A. Yes, Saturday.

Q. Do you know what year?
A. 2005.

Q. Do you know what month?
A. No.

Q. I want to take you back to the day that your mom and dad died. Can you tell us what you were doing when you first -- that first part of that day.
A. We were sleeping. It was morning time.

Q. Okay. Did you awaken -- did you wake up at some point that morning?
A. Just when the IED went off.

Q. Okay. Do you remember what time the IED went off?
A. No.

Q. Was it still in the morning?
A. Yes.

Q. Safah, did you call what went off an "IED" or did you say "bomb"?
A. I don't know exactly.

TC [Maj Erickson]: I guess, I need to know. Did she say "IED" or did she say "bomb" when I asked that first question? Was that translated inaccurately?

INTRPTR: Yes -- that is, if you have any suggestion, please let me know.

TC [Maj Erickson]: Okay.

INTRPTR: Because a bomb is a bomb. An IED is different.

TC [Maj Erickson]: Okay. So she said "IED"?

INTRPTR: Well, "audwa" which is basically an IED.

TC [Maj Erickson]: Okay.

DO: Can you spell that in Arabic what you just said? Spell it in English for the court reporter please.

You said -- when you said a word, can you spell it for the court reporter.

INTRPTR: A-U-D-W-A.

DO: Thank you.

Questions by the defense (continued):

Q. After you heard the IED go off, what did you do?
A. I didn't do anything, but when the forces came in, they started firing rounds at the house.

Q. Before we get to that, who was in the house as soon as the IED went off? Who was in your house?
A. My family, all of them.

Q. Okay. Can you name all of the your family for me.
A. My dad named Salman Rasif.

Q. Was that it?

INTRPTR: I just want to ask her if she said Salman Rasif.

WIT: Yunis Salman Rasif. My mother was there, Ida Yaseem (ph) Rahman, my sister Nor Yunis Salman, my other sister Seba Yunis Salman, my other sister Zana Yunis Salman, Asya Yunis Salman, and my brother Hamed (ph) Yunis Salman.

Q. Was there anybody else in the house?
A. And my maternal aunt, Huda Hussayn Rahman.

Q. As soon as heard the IED go off, where was your dad [inaudible] from the house?
A. He was in his room.

Q. And where was your mom Ida?
A. With him in the room.

Q. And how about your sister Nor?
A. In the other room from the second room.

Q. And your sister Seba?
A. With her in the other room.

Q. And your sister Zana?
A. In the same room with her.

Q. And your sister Asya?
A. With her.

Q. And your brother Mohammed?
A. With them.

Q. And your aunt Huda?
A. She was in our room.

Q. With Nor?
A. Yes in the room.

Q. And where were you?
A. Will them in the other room.

Q. With Nor? Was she in the same room as Nor?
A. Yes.

Q. And what were all of them doing in Nor's room?
A. We were sleeping.

Q. So what did you do when you woke up?
A. I woke up after a while and then there was a knock on the door -- on the house door --

Q. Before you heard the knock on the door, where were you?
A. We were all gathered in my dad's room.

Q. Why were you all gathered in your dad's room?
A. We were kind of scared.

Q. Why were you scared?
A. Due to the sound.

Q. And what was the sound?
A. The explosion.

Q. You said you heard a knock on the door. What happened after you heard the knock on the door?
A. My dad was going to open the door. Before he got to the door a fire -- rounds were going on then he kept going to open the door, and then while he was walking he got shot.

Q. And did you see your dad get shot?
A. No. I heard the sound.

Q. And what happened after you heard the sound of the shots?
A. The American forces entered the house.

Q. And how do you know they were American Forces that entered the house?
A. When we heard firing, we gathered in one room. The door of the room was open, we looked through the door, we saw that it was American Forces, then we went back in the room.

Q. And do you remember how many American Forces you saw?
A. I don't remember exactly.

Q. Was it more than one?
A. I don't remember.

Q. All right. And you said you were all gathered in one room, which room was it that you all were gathered?
A. My dad's room.

Q. Okay. And who was all in there?

A. Where?

TC [Maj Erickson]: I'm sorry?

INTRPTR: She's asking you where.

TC [Maj Erickson]: She said she was all gathered in her dad's room. Who was all gathered in her dad's room.

WIT: The whole family.

Questions by the prosecution (continued):

Q. And after you looked through the door and saw the American Forces, what happened next?
A. I went back and there was the bed and I Saturday on the bed.

Q. How did you know they were American Forces?
A. I saw them.

Q. Have you seen American Forces before?
A. Yes.

Q. How did you see them before?
A. Before they came in, they searched the house.

Q. When they searched the house did they take anything?
A. No.

Q. When you saw the American Forces where they carrying anything?
A. Yes.

Q. And what were they carrying?
A. Weapons.

Q. Do you know what kind of weapons?
A. Machine guns.

Q. Could you describe what the American Forces were wearing?
A. Regular uniforms just like the one I'm wearing.

DO: Can you state for the record --

TC [Maj Erickson]: Let the record reflect that the interpreter is wearing MARPAT desert utilities.

Questions by the prosecution (continued):

Q. Did you notice anything else they were wearing?
A. I don't know what they were wearing exactly.

Q. Could you see the faces?
A. I saw them, but I don't remember what they are.

Q. Okay. So after you looked out of the room, you said you went back and sat on the bed. What happened next after you sat on the bed?
A. They threw a grenade inside the room and they closed the door.

Q. Okay. When you say "they threw a grenade in the room," who through a grenade in the room?
A. The American Forces.

Q. Okay. How many?
A. I saw one throw it in and close the door.

Q. And what did that person that through the grenade look like?
A. I don't remember.

Q. You remember height?
A. No.

Q. What happened after the grenade was thrown in the room and the door closed?
A. A water pipe broke -- it sounded like a water pipe broke.

Q. What happened with the grenade that was thrown in your room?
A. It did not explode.

Q. Where did it go?
A. It stayed on the floor.

Q. And what did your family do when they saw the grenade on the floor?
A. They moved away from it.

Q. Did anybody say anything?
A. No. But due to the fact they were afraid, we just moved away from it.

Q. Did they scream?
A. No.

Q. Did they yell?
A. My aunt, when she opened the door, she saw my dad in the kitchen then she started yelling or screaming.

Q. Okay. Before we get to that, with the grenade on the floor, did anybody try picking it up?
A. No.

Q. Okay. After the grenade is thrown in, how long were you in the room before you aunt opened the door?
A. I didn't time it.

Q. Okay. You said earlier you heard water running. How long after -- I mean did that occur before or after the grenade was thrown in the room?
A. After -- before and after.

Q. Okay. When you say "before" what did you hear before the grenade was thrown in the room?

DC [LtCol Vokey]: I object to vague and this little room that we are talking about.

TC [Maj Erickson]: I didn't understand your objection.

DC [LtCol Vokey]: The question is vague. I'm not sure what room you are talking about throwing a grenade in.

TC [Maj Erickson]: Okay.

Questions by the prosecution (continued):

Q. You stated earlier that the room that you were in, someone threw a grenade and closed the door; is that right?
A. What?

Q. She said earlier that somebody had thrown a grenade in the room that she was in and closed the door.
A. I wasn't alone; it was me and the whole family.

Q. Correct and there was a grenade thrown in that room?
A. Yes. Thrown in the room and closed the door.

Q. Okay. And then you said that you heard noise like water

running before and after that grenade, starting with that grenade?

A. Yes.

Q. Okay. Tell us exactly what you heard before the grenade was thrown into the room that you were in.

INTRPTR: I think she --

DO: Can you translate what she said.

INTRPTR: She just said that when the American Forces came, we heard fire sounded -- fighting outside, then they knocked on the door.

DO: Did you hear that counsel?

TC [Maj Erickson]: I heard it.

Questions by the prosecution (continued):

Q. After you heard the shooting. After your dad went to answer the door when it was being knocked on, when you heard shooting, what did you hear right after the knock?

A. We wanted to know -- I heard water running -- the sound of water running.

Q. Okay. And after you heard the sound of water running, what happened after that?

INTRPTR: She said a word that I don't understand.

DO: Okay.

A. My dad looked at the door, she looked -- she saw my dad in front of her dead, she was screaming.

Q. And how do you know your aunt saw your dad dead?

A. When we were in the same room, she told us.

Q. Then what happened next?

DC [LtCol Vokey]: I'm going to object to the last statement being hearsay.

DO: Tell her she can continue your answer.

The interpreter did as directed.

A. She screamed --

TC [Maj Erickson]: Hold on a second. Ma'am, we need a tape.

DO: I'm sorry?

TC [Maj Erickson]: We need a tape.

DO: Oh, okay.

The deposition recessed at 1638, 21 February 2008.

The deposition opened at 1647, 21 February 2008.

DO: We're back on the record.

Safah Yunis Salim Rasif, I will remind you that you are still under oath.

Counsel, do you have any other questions?

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Safah, before we broke, we were talking about the sound of water running. I want to go back to that; okay?

So the first time you heard water running, what happened after you heard the water running?

A. As soon as I -- as I said, I heard the water running and my aunt saw my dad and she screamed and the firing -- shooting going on.

Q. So what did you do after you heard your aunt scream?

A. I was confused, I cried. After she screamed, we were crying, and the American Forces started shooting.

Q. Did you know where the American Forces were shooting?

A. You mean from where?

Q. Yes.

A. I don't know exactly.

Q. What happened after you heard the American Forces shooting?

A. We were all located in the room.

Q. Okay.?

A. I was confused. There was space between the wall ask

the bed, so I sat down.

Q. When you say "between the wall and the bed" which wall was that? Do you remember?
A. What do you mean? What wall?

Q. I'm going to hand you a piece of paper and a pen, and I'm going to ask you just to draw the outline of your room.
A. Big? Regular? Small?

Q. Make it big.

The witness did as directed.

Q. Can you hold that up for me real quick.

The witness did as directed.

Q. And what, if any, furniture was in that room?

INTRPTR: I'm sorry?

Q. What, if any, furniture was in that room?
A. That's the room, and the bed was in middle.

Q. Can you draw the bed on there for me, were the bed was?
A. It's not going to be clear. I can explain, I am show you.

Q. Okay. What I want you to do is -- how many doors where in the room?
A. One door.

Q. Okay. Draw on there with another line where the door was?
A. There's a room on this side -- on the other side, and the door is there.

Q. I want you to draw where the door is on the diagram by just putting another line?
A. Should I --

DO: Counsel, you just want her to draw on the diagram --

TC [Maj Erickson]: What is she saying.

DC [LtCol Vokey]: What did she say.

INTRPTR: She said should I show you on this door.

Questions by the prosecution (continued):

Q. No, no. I want you to draw it on that square. Is that square what your room liked like? Was that the shape of the room?
A. This is a regular room.

Q. Is that like the room that you were in that day?

DC [LtCol Vokey]: I'm going to object. I want to hear --

DO: What --

DC [LtCol Vokey]: -- the translation of anything that's being spoken.

DO: Okay. What did you say, and what did she say before we go further?

INTRPTR: That's what I am trying to understand.

DO: Okay. What did you say and what did she say?

INTRPTR: I just told her to explain it to me because I'm not with her.

DO: And what did she say?

INTRPTR: She said --

DO: Ask her to repeat what she just said.

WIT: The room is just a square, regular room.

Questions by the prosecution (continued):

Q. Okay. And you said there was one door in the room; right?
A. Yes.

Q. Okay. I want you to show me with a pen, mark where the door was on that square?
A. There's a room on this side and a room on that side. There's a wall that's for the second room. And this wall is for the living room.

TC [Maj Erickson]: All right. Let me see this.

Counsel reviewed the document.

Q. Safah, what I need you to draw is I need you to draw on that square; okay? On that square, I just want you to put another line that will signify where the door is in the room?
A. It's not going to be clear because of the door of this room. You see, there's a room on this side and a room from the other side and the door is right here.

Q. So if this is the room that you are in, where would I enter that room? Mark it with a pen with a line -- just with a small line.
A. It's not going to be clear.

Q. I'm not being clear, I guess.

All right. Let's try it again.

Pretend like you are looking down at your room; okay, looking down at it. Now, while you are looking down, where would the door be in the room? Mark it.
A. When I am sitting in the room --

Q. No.
A. -- in this way, the door would be down.

Q. Okay. Can you mark it on there.?

TC [Maj Erickson]: We will make this as Deposition Exhibit 1. I'm going to try this again.

DO: Okay.

Questions by the prosecution (continued):

Q. Safah, I want you to draw the outline of the room that you were in. Outline the room, all four walls, like you are looking down at it.

Were there four walls in the room?
A. Yes.

Q. Okay. Was there a door in the room.
A. Yes.

Q. Can you draw the four walls like you are looking down at your house.
A. I don't know how to draw it to where it makes sense.

Q. Is the four walls in the shape of a square.
A. Yes, it is. And there's a window inside there.

Q. Okay. But the four walls are in the shape of a square?
A. Yes.

Q. Can you draw a square on the paper.

INTRPTR: Draw a square you mean?

TC [Maj Erickson]: Yes.

Q. Okay. On the side of that square, I want you to draw an arrow pointing to the top of the page signifying the front of the room.

INTRPTR: I'm sorry. Would you say this again.

TC [Maj Erickson]: Okay.

Q. What I want on the side there, I want you to put an arrow showing me where the front of the room is.
A. I don't understand how.

Q. Okay.

DO: Counsel, earlier, she had indicated where the rooms were adjacent. That might help her bring --

TC [Maj Erickson]: Yeah. I don't want to draw the whole diagram.

DO: Okay.

Questions by the prosecution (continued):

Q. That -- the square signifies the room the room you were in that day; is that true?
A. Yes.

Q. Okay. And you said earlier when I asked you was there any furniture in the room, was there any furniture in the room?
A. Yes, there is.

Q. Okay. What kind of furniture was it?
A. You want me to tell you what was there?

Q. Yeah.?

TC [Maj Erickson]: I just want her to tell me.
A. There was a big counter, a mirror -- there's a mirror with a stand, a bed --

Q. Okay. The bed. Can you draw the bed, were it is in the on that square?
A. I can't explain it.

INTRPTR: Referring to the door.

Q. Okay. I want you to draw the bed, where it is in that square?
A. I'm not -- I don't know how to draw.

Q. Okay. You don't know how to draw? Okay. We're going to help it out.

How long did you live in that house?
A. I don't remember.

Q. How many rooms were in that house?
A. You mean the rooms or the living room.

Q. How many bedrooms?
A. Two, one for us and one for our parents.

Q. And where were those rooms located in the house?
A. The kitchen door in front of the kitchen.

Q. Were the bedrooms in front of the house?
A. No.

Q. Okay. Were they on the first floor?
A. When you first enter the kitchen, they are in front of you. There are stairs and a bathroom on this side and there's a bathroom on the other side.

Q. Okay. When you enter the room -- when you enter that back room through the door, as you walk through the door, where is the bed? Is it to your right or is it to your left?
A. When you enter the room, the bed, steer to the right.

Q. Okay.?
A. To the right.

Q. Okay. When you look to your right as you enter that room, what do you see?
A. The bed. When I first enter to my right, there's a bed in front of it and there's a mirror.

Q. And are there any windows as you look to your right?
A. Yes.

Q. Okay. And when you look to your right and you look at the wall directly to your right, is there a window on that wall?
A. You mean when I enter the room?

Q. Yes.
A. In the front of the door there isn't anything. But on that side there's --

Q. On what side?
A. Two sides, on the right and when you first walk into the room.

Q. So there's two windows.
A. Yes.

Q. On two different walls?
A. Hold on a minute. Let me remember. There are two rooms so I am getting confused according to my memory.

TC [Maj Erickson]: I couldn't hear her. What was the last reply?

INTRPTR: According to what her memories are.

Q. Let's go back to what started this painful exercise and I asked -- you said that you were on the floor by the bed and the wall. And I'm just trying to figure out what do you mean by the bed and the wall.
A. When the American Forces came in and due to the confusion, the result of my confusion, I became between the bed and the wall.

Q. Okay. And the bed and the wall -- was there anybody else between the bed and the wall?
A. I don't remember. But when it happened and shooting was going on, then I find my sister was beside me.

Q. Which sister?
A. Nor.

Q. And you said she was next to you. Was she on the floor too?
A. Yes. I was on this side and she was on that side.

Q. What do you mean "this side and that side"? Was she on -- between the bed and the wall --

DC [LtCol Vokey]: Objection. Compound.

Q. Was she on the floor between the bed and the wall on the same side of the bed as you were?
A. I was in this direction, she was right here.

Q. This direction being further from the bed? Back of the bed?
A. Both of us where like the [inaudible] up off the bed.

Q. Okay. All right. And when you saw Nor there on the floor, what was she doing?
A. She was hit on her head.

Q. Okay. What do you mean hit in the head?
A. After the fighting stopped, she tried to tell her to -- you know, tried to wake her up and tell her to get up with me. I didn't know that the people that were on the bed where dead.

Q. Okay. Before we get to all of that, I want to take this step by step. You said -- I am going to take you back where your aunt screamed; do you remember that? Do you remember?
A. A little bit. What do you mean do I remember?

Q. Do you remember when you told me just a few minutes ago that your aunt screamed?
A. Yes.

Q. And then after your aunt screamed, you said you were scared and confused and got on the floor between the bed and the wall; do you remember that?
A. When she first screamed, I was on the bed. But when I heard the firing I jumped.

Q. Okay. And when you said you heard the fighting, did you see anything?

A. See what?

Q. Anything.
A. No.

Q. Okay. When you said "heard fighting," what do you mean? What exactly did you hear?
A. What do you mean?

Q. What noises did you hear?

DO: What did she say?

INTRPTR: Just the sound of weapons.

Q. Okay. Did you see anybody come into the room?
A. I saw from under the bed.

Q. And what did you see?
A. I saw a person that looked American.

Q. From under the bed?
A. Yes.

Q. And how could you tell they were American?
A. From the -- from their look.

Q. Okay. Could you see the whole person from under the bed?
A. Yes.

Q. Okay. And where were they?
A. I saw one person.

Q. Okay. And where was that one person?
A. In the room. I cannot tell you exact location.

Q. Okay. And was that person holding anything?
A. Yes.

Q. What was that one person holding?
A. A weapon.

Q. Okay. And was that person firing at a weapon?
A. When I saw him?

Q. Yes.
A. Yes.

Q. And could you see what that person was firing at?
A. As soon as saw the person I fainted.

Q. Okay. And then when you fainted, what do you remember next?
A. I think it was for a very, very short time. I woke up, the fighting was calm. I came to wake up my sister with me --

Q. What sister?
A. Nor that was beside me.

Q. Okay. Then what happened after you tried to wake up your sister?
A. I saw -- I know she was dead because her head, there was blood under the bed. I came, I saw my brother crying. He was injured. He was injured in his hand. I tried to wrap with something, but I couldn't because it was hurting him.

Q. And what happened next?
A. I tried to tell him to go to my uncle's house, it was next to us. He told me --

INTRPTR: Maybe he thought she was injured.
A. -- he said just go and don't worry about me. You go alone.

Q. And what happened next?
A. I fainted again.

Q. Where did you faint?
A. When I was between the bed and the wall.

Q. Okay. And what happened after -- what happened next?
A. I fainted, and I woke up in the afternoon.

Q. And what did you see?
A. I looked and find the whole family had been killed.

Q. Okay. When you say "the whole family" what exactly did you see? Did you see your mom?
A. Yes. I saw her.

Q. And where was your mom?
A. On the bed because she had surgery.

Q. Okay. Did you see your brother?

A. Yes.

Q. And where was your brother?
A. Also on the bed.

Q. Okay. And did you see your sister Asya?
A. Yes.

Q. And where was your sister Asya?
A. Also on the bed.

Q. Did you see your sister Seba?
A. Yes.

Q. And where was Seba?
A. On the bed.

Q. Okay. Did you see your sister Zana?
A. Yes.

Q. And where was your sister?
A. On the bed.

Q. Okay. Did you see your aunt Huda?
A. Yes. When I got up I saw her.

Q. Do you remember were you saw her?
A. On the floor, you know, the bed. It's next to the bed on the ground. Not where we are, its on the other side.

Q. Okay. Did you have a opportunity to see your dad again that day?
A. No. I passed by them, but I didn't see them.

Q. I'm sorry what was that? Passed by and didn't see them?

INTRPTR: She said I left, I passed by him, I did not see him.

Q. Safah, before you fainted the first time, you said you saw an American shooting in your room?
A. I saw somebody that looked like an American, but I didn't see who was firing.

Q. Okay. And you said you saw that person from under the bed?
A. Yes.

Q. Okay. Do you remember whether or not it was light or

dark in the room?

A. No.

DC [LtCol Vokey]: Objection. Nonresponsive to the question.

DO: Please translate what she just said.

INTRPTR: It was morning time. It was just -- it was daylight, so I don't know if the light was on or not.

Q. Before the Americans came and shooting in that room, could you see in the room when you were sleeping on the bed?

DC [LtCol Vokey]: Objection. This has been asked and answered. She's already answered that question.

DO: She can answer.

WIT: Repeat that question.

Q. Was there enough light to see in the room before the American came in shooting and you were sitting on the bed?

DC [LtCol Vokey]: Leading, compound, vague and asked and answered. All of the above.

TC [Maj Erickson]: Actually it not because I asked when she was on the floor looking under the bed --

DC [LtCol Vokey]: She's already answered this question, and now --

TC [Maj Erickson]: I'm asking if she was sitting on the bed, sir, it's a different time.

DC [LtCol Vokey]: Sitting on the bed is what? Thirty seconds later, it's crazy --

TC [Maj Erickson]: It's a different perception --

DC [LtCol Vokey]: You are leading this witness, I will not permit that.

TC [Maj Erickson]: Well --

DC [LtCol Vokey]: This is an --

DO: Okay. Counsel, your objection is noted for the record --

DC [LtCol Vokey]: Ma'am, are you going to let this go on, ma'am?

DO: I'm going to --

DC [LtCol Vokey]: This is ridiculous.

DO: Your objection is noted for the record.

Now, what was the last question that you asked, counsel?

Questions by the prosecution (continued):

Q. Safah, when you were sitting on the bed, what was the lighting like in the room?
A. I don't remember if the light was on or not, but it was the light from the sun -- sunlight.

Q. And how many windows where in that room?
A. I can't remember. But what I remember, which was two.

Q. Okay. Do you remember whether or not there were any curtains on those windows?
A. Yes, there was.

Q. And do you know whether or not those curtains were closed or were they open?
A. I can't remember. But what I remember is that they were closed.

DO: We are at a stopping for --

TC [Maj Erickson]: Ma'am, we can stop right now.

DO: Okay. Thank you. Let's take a little bit of a break.

The deposition recessed at 1900, 21 February 2008.

The deposition opened at 1939, 21 February 2008.

DO: We are back on the record.

Safah Yunis Salim Rasif, I remind you that you are still under oath.

Counsel, you may continue.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Safah, before we broke we were talking about when you woke up the second time you fainted. Do you remember that?
A. Yes.

Q. And we went through each member of your family and were you saw them after you woke up; do you remember that?
A. Yes.

Q. Okay.

DO: Excuse me. Please make sure she gives a loud, audible response for the record.

The interpreter did as directed.

Q. Now, we went through great detail with you when you saw your sister Nor and the picture you saw your sister Nor in; do you remember that?
A. Yes.

Q. Okay. I would like a little more detail about the members of your family; okay?
A. Go ahead.

Q. Okay. I want to start with your mom. Now, when you woke up from your second faint, can you tell us a little more of were your mom was?
A. On the bed.

Q. And what was she doing on the bed?
A. She was dead.

Q. And how did you know she was dead?
A. She didn't breathe.

Q. Okay. Did you check to see was breathing?
A. No. But according to me looking at her --

Q. Okay. Now, you also said you saw your sister Zana on the bed; correct?
A. Yes.

Q. And what was Zana doing?

A. She also was dead.

Q. And how do you know she was dead?
A. From the way she looked and the way I seen her.

Q. Do you remember anything specific about the way she looked?
A. Her hand. It was obvious. There was blood.

INTRPTR: I'm sorry. You are talking about the female; right.

TC [Maj Erickson]: I'm talking about your sister Zana.

INTRPTR: She is referring to a male at this point.

DO: She's referring to a male in her answer, counsel, is what he's saying.

Q. I want to know about your sister Zana.
A. Okay.

Q. How did you know she was dead?
A. I saw her head and her hand was bleeding.

Q. Okay. How about your sister Seba?
A. She also was on the bed, there was blood coming down. And also according to what I had seen.

Q. And your sister Asya?
A. I also saw her.

Q. And what was she doing?
A. She was injured by her legs due to the bleeding and the way I saw her and the way she looked.

Q. Okay. And where was she?
A. On the bed.

Q. What about your brother Mohammed?
A. On the bed.

Q. Okay. You said earlier you had talked to him after the first time you fainted. What was he doing after the second time you fainted?
A. He was laying on the bed. I didn't know if he was dead or alive or not.

Q. Okay. Did you check?

A. No.

Q. What about your aunt Huda where was she?

DO: The audio is having a problem picking up the sound.

TC [Maj Erickson]: Okay.

DO: So please try to speak up louder.

Cpl Schulz: You need to keep them quite if you want the --

DO: He's going to.

Questions by the prosecution (continued):

Q. Your aunt Huda, where was she?
A. On the floor.

Q. And what was she doing?
A. She had -- she was wearing the female --

INTRPTR: I'm just trying to -- the Iraqi custom for the cover for the female. They wear it on their shoulders, on there heads. The long black dress.
A. I saw blood. She wasn't laid on the ground, she was --

INTRPTR: I don't know how to -- she didn't give me exact details.

DO: Just say exactly what she said.

What did you just ask her?

INTRPTR: How does she -- if she was laying how did she look on the ground.

WIT: Just like when you are just gesturing, like, when you are [inaudible].

TC [Maj Erickson]: When you are what?

DO: Would you repeat that for the --

INTRPTR: Like when you bow --

DO: When you bow down?

INTRPTR: -- bow down, that's how she was.

Questions by the prosecution (continued):

Q. And you checked to see if she was alive?
A. No.

Q. What did you do after you saw your family?
A. I left the house and I went to my uncle's house next to my house.

Q. Okay. And aside from your family in that bedroom, was there anybody else in that bedroom?
A. Other than my family that I just mentioned?

Q. Yes.
A. No.

Q. Was there any time during the day up to before you even left the house, was there anybody else in that room besides the family that you just mentioned?
A. When I woke up the next time, the second time, I stayed in my place and I heard gunfire outside. I was confused, so I stayed in my place. According to what I noticed, American Forces came in. I don't know how many came in inside.

INTRPTR: So she said "Oh, they died," but she said in Arabic.

Q. And other than your brother Mohammed and your father, were there any other males in the house that day?
A. No.

Q. And other than the Americans with weapons in the house, were there any other weapons in the house?
A. In our house?

Q. Yes.
A. No.

DC [LtCol Vokey]: What's the purpose in showing the witness the photos?

TC [Maj Erickson]: I'm going to have to write that at the bottom.

DC [LtCol Vokey]: For extra identification?

TC [Maj Erickson]: For identification, sir. Yes, sir.

DC [LtCol Vokey]: Then I don't agree. She's already identified

by name who's in that room.

TC [Maj Erickson]: I still want to go through that.

DC [LtCol Vokey]: Okay. I will object.

DO: Proceed.

DC [LtCol Vokey]: Just make sure that they got our objection to the prosecution showing the photos to the witness.

DO: Your objection is noted.

Continue.

TC [Maj Erickson]: What's the basis, sir?

DC [Capt Bonner]: The government is going to try to get the witness to ID people presumably that were in the house, and she has to testify. She's already identified them by name.

DO: Did you get that objection?

Court Reporter: Yes, ma'am.

Questions by the prosecution (continued):

TC [Maj Erickson]: Okay, Safah. I need to show you some photos; okay? And the photos are gruesome; okay? They are --

What's another word for gruesome?

DC [LtCol Vokey]: Unpleasant.

Q. -- unpleasant, bad.

Now, Safah, I am going to hand you what's been marked as photo number 0088, and I want to mark that as Deposition Exhibit 2, which is the next in line.

Safah, does that picture look familiar to you?
A. Yes.

Q. Do you know what's depicted in the photo? Do you know what's in the photo?
A. I don't know. I mean I can't tell exactly but I think that's my aunt.

Q. Okay. Let me take that from you.

TC [Maj Erickson]: Next photo I am going to show is photo number 0089. I would like to make that Deposition Exhibit Number 3.

Q. Safah, do you recognize the contents of that photo?
A. Yes.

Q. Can you tell us what that photo shows?
A. That's my mom.

Q. Okay. What else does that photo show?
A. It's not clear.

Q. Okay. And was your mom the adult woman that's laying on the bed there?

DC [LtCol Vokey]: Objection. Leading.

Q. Could you hold the picture up for me. And with you point to your mom for me?

DC [LtCol Vokey]: I'm going to object to this. The question of the admissibility of these photos is being litigated at Camp Pendleton and we are going to put it on the camera right now in the deposition.

I don't so a purpose for showing these to the camera.

TC [Capt Hur]: Excuse me everybody. The videographer needs to change tapes.

TC [Maj Erickson]: Okay.

DO: Did you get that objection on the tape?

Cpl Schulz: Yes, ma'am.

DO: Okay. Thank you. Are you finished with your objection, counsel?

DC [LtCol Vokey]: Yes, ma'am.

DO: You may proceed.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. I'm going to hand you photo number 0093, and I would like that marked as Deposition Exhibit number 4.

Safah, do you recognize anybody in that photo?
A. That's my sister Seba.

Q. Okay. I'll take this photo.?

TC [Maj Erickson]: I'm now handing the witness photo number 0087. And I would like that one marked as Deposition Exhibit number what? 5 now?

DO: Correct.

Q. And do you recognize the person in that photo?
A. Yes.

Q. And who is that?
A. My mother.

Q. That's my mother?
A. That's my dad.

DO: Counsel I noticed that when you asked her "do you recognize," it was not a translation and she immediately answered.

Is that acceptable to you?

Q. Safah, do you know English?
A. No.

DO: We can take just a brief recess.

We are off the record.

The deposition recessed at 2000, 21 February 2008.

The deposition opened at 2002, 21 February 2008.

DO: We are on the record.

Safah Yunis Salim Rasif, I remind you that you are still under oath.

TC [Maj Erickson]: I'm going to go ahead and pass the witness.

DO: Counsel, I want to confirm that this is Exhibit 5.

TC [Maj Erickson]: Yes.

DC [LtCol Vokey]: Ma'am, can we take a recess for about 10 minutes?

DO: Sure.

The deposition recessed at 2003, 21 February 2008.

The deposition opened at 2017, 21 February 2008.

DO: We are back on the record. Safah Yunis Salim Rasif, I remind you that you are still under oath.

Counsel you may continue.

TC [Maj Erickson]: I'll pass the witness, ma'am.

DO: Does counsel for the defense have any question for the witness?

DC [LtCol Vokey]: Yes, ma'am.

DO: Thank you.

CROSS-EXAMINATION

Questions by the defense:

Q. Safah, hi. My name is Lieutenant Colonel Vokey.

Thank you for coming. It is very brave for you to come.

Do you feel you are in danger for coming in testifying?
A. I'm a little scared.

Q. You don't feel in danger in here do you?
A. When I saw the picture, I got -- a little bit.

Q. Can you still answer questions, or do you want to take a break?
A. No.

Q. Okay. You said that you recognized Americans because

they had searched your house before?
A. Yes.

Q. Okay. Well, tell be about that. What happened?
A. When?

Q. When did the Americans search your house before this day?
A. They came and they did the normal search.

Q. And why did they search your house?
A. I don't know, but they searched the neighborhood, they searched that house.

Q. And did they take anything from your house?
A. No.

Q. And did they question anybody in your house?
A. No.

Q. Did you know the IED was down in the street before it exploded?
A. No.

Q. Did you know there were a lot of IEDs on that same road?
A. You mean they were planted?

Q. Yes.
A. No.

Q. Have you heard of any other IEDs in your neighborhood?
A. No.

Q. Tell me about the insurgents, the mujahideen in the area at the time?

INTRPTR: I'm sorry. Would you repeat the question.

Q. Tell me about the insurgents or the mujahideen in the area at the time.
A. I don't know anything.

Q. Have you heard anyone talking of mujahideen in that area?
A. No.

Q. Had there ever been fighting near your house before that time?

A. I don't remember.

TC [Maj Erickson]: What was that last reply? I'm sorry.

INTRPTR: I do not remember.

Q. Who was your neighbors?
A. My uncle's house, Abdul Hameed's house, my uncle Yaseem's house and Abdul Hameed.

Q. Okay. And you lived in that house the whole time?
A. No.

Q. Where did you live before?
A. We used to live in that house where my uncle lived in.

Q. Okay. Have you ever left Haditha?
A. Outside of Haditha, no.

Q. There's been a lot of fighting in Haditha, hasn't there?
A. What time? When?

Q. Before your family was killed.
A. I don't know.

Q. I'm sorry. She said --

INTRPTR: I do not know.

Q. You don't know of any fighting before that day?
A. No. Because I was little.

Q. And how old are you now?
A. Fifteen.

Q. And you were 13 when your family was killed?
A. I don't remember, but I was in the first grade of secondary school.

INTRPTR: I'm sorry. "The first grade in middle school".

Q. The Marine that came in your room, he was white; right?
A. I don't remember his face.

Q. Okay. And he was shorter than you were; right?
A. I don't remember.

Q. Safah, do you know how tall you are?

A. Sixty-four.

Q. 64 inches tall?
A. Yes.

Q. And before we started today, we actually measured you; right?
A. Yes.

Q. And was this woman measured to you, Sergeant Trujillo?
A. Yes.

Q. And you spoke with her for a few minutes?
A. Yes.

Q. And did you tell her that you saw a Marine that was shorter or the same size as you that entered your room?
A. I told her, but I wasn't sure.

Q. You're not sure, now?
A. Now, and then when I told her.

Q. You only saw one Marine enter that room?
A. What I saw is one, but I don't know if there were any others.

Q. And I know you are two years older than when this happened; right?
A. Yes.

Q. And have you grown up in two years?
A. Yes.

Q. You've become taller?
A. Yes.

Q. Now, I am going to ask you about an interview that you gave on this investigation in March of 2006.

There was an American investigator, his name is Bryan Brittingham, and he came and asked you a lot of questions about what happened to you. And in that interview, you told him that he was a white guy, that he was a little shorter than me.
A. No.

Q. You did not say that?
A. No.

Q. Are you sure?
A. Yes.

Q. Did you see how many Marines were in your house?
A. I don't remember.

Q. Did you actually see any of the Marines other than the one that came in your room?
A. No.

Q. No? When Huda was shot where were you at that time?
A. In the room.

Q. Were you in the doorway looking out?

INTRPTR: I'm sorry. Would you rephrase this.

Q. Were you standing in the room so you could look down the hallway?
A. No.

Q. When is the first time you saw the Marine who came into your room?
A. Repeat that question, please.

Q. Where were you when you first saw the Marine enter into your room?
A. I was in the room.

Q. Where in the room?
A. You mean when he enter and through the grenade or when he started shooting?

Q. The first time you saw a Marine come into your room.
A. He just through a grenade.

Q. And did you see that Marine when he threw it?
A. Yes, I saw him.

Q. And is that the Marine that was shorter than you?
A. I don't know I cannot specifically say his height.

Q. Is that the same Marine who was shooting in the room?
A. I wasn't paying attention to the features.

Q. Now, when you talked to this investigator back in March of 2006, you told him that you saw the Marine approaching the doorway; didn't you?

A. What do you mean "toward the door"?

Q. Okay. I'm going to read you the transcript from your interview; okay? This is the same interview when Khalid was present.
A. Yes.

Q. And you said "I was standing by -- by the bed, at the edge of the bed with the wall behind me --

INTRPTR: Did you say "behind me"?

DC [LtCol Vokey]: Yes.

Q. "I could see the front door, the door of my mom's bed --
A. No. From under the bed --

DC [LtCol Vokey]: Tell her to hold on until I finish reading all of this.

The interpreter did as directed.

Q. "The door of my mom's bedroom was open, which is not directly ahead of me, but was slightly to my right. But I could see the corridor at least to the kitchen --

INTRPTR: I'm sorry what door?

Q. "I could see the corridor," the hallway "at least to the kitchen. The door was open. I saw the Marine approaching. As he started to approach, he started shooting, he started firing."

Is that what you told the investigator?
A. Telling him what?

INTRPTR: She's saying repeat the sentence, the third sentence.

DC [LtCol Vokey]: I'm sorry. What was that?

INTRPTR: She's saying to repeat what we just said sentence by sentence.

Q. "I was standing by -- by the bed at the edge of the bed with a wall behind me."
A. When was that?

Q. This is what you told the investigator.

A. I wasn't standing by the edge of the bed.

Q. So did you tell the investigator this?
A. I didn't tell him I was standing. I was, you know, laying between the bed and the wall.

Q. So this transcript I am reading is wrong?
A. No. I wasn't standing.

Q. You didn't tell the investigator this?
A. No.

Q. Now, when he was interviewing you, he had someone like him typing it out, didn't he?
A. I don't know.

Q. Okay. Let me ask you some more about that interview.

Did you say, "I saw the Marine shot my aunt"?
A. To be honest, I don't remember.

Q. Is that true?
A. I don't remember.

Q. Did you say "he was white"?
A. No.

Q. You did not say that?
A. No.

Q. Did you say that "he's a little shorter than me"?
A. No.

Q. You didn't say any of this to the investigator?
A. I told him he was short, but I didn't specify his height.

Q. Just that he was a little shorter than you.

INTRPTR: I'm sorry?

Q. You didn't specify his height, you just said he's a little shorter than you.
A. I did not say he was shorter than me.

Q. And you remember having this interview?
A. I don't remember.

Q. I am reading from a transcript that was typed as you were talking; do you remember that?
A. No.

Q. Its being typed just like it is right now [sic].

DO: See if she needs to get all her [inaudible].

Q. And this interview was on March 15th 2006?
A. I don't remember.

Q. And the interview was at the Haditha hospital?
A. There were interviews in Haditha hospital, but I don't remember.

Q. And at this interview, you also had Mohammed Salim Rasif.
A. He came because of some interviews, but I don't remember if he was there at that interview.

Q. And also Yaseem Salim Rasif was there too?
A. I don't remember. There was an interviewer, both of them came.

Q. And do you remember that someone was typing it up just like here?
A. I don't remember.

Q. Was it being recorded and taped or filmed?
A. I don't remember.

Q. Safah, do you just not remember what you said on that day?
A. No.

Q. So this is what you -- what I read is what you said, you just don't remember?
A. No. That's not what I said. I don't remember.

Q. So is this transcript that I am reading to you, is that a lie?
A. To be honest with you, I don't remember.

Q. You said that you passed out when you were in that room two times; correct?

INTRPTR: You said two times.

DC [LtCol Vokey]: Yes. Did she pass out two times.
A. Yes. The first time was just for a short time.

Q. Now, after the second time you passed out someone came in the room and said something?
A. Yes.

Q. And did you see those people?
A. No.

Q. But they said something out loud in Arabic.
A. Yes.

Q. And was it a man's voice?
A. Yes.

Q. And what did he say?
A. They said "Oh, they died".

Q. And that was said in Arabic?
A. Yes.

Q. Safah, did anyone ask you if you wanted to come to the United States?
A. From who?

Q. Did anyone ask you if you wanted to come to the use for this case?
A. No.

Q. And you know Khalid?
A. Yes.

Q. And how do you know him?
A. He's my dad's cousin.

Q. And do you know him pretty well?
A. Yes.

Q. Is he nice to you?
A. Yes.

Q. And he's family?
A. Yes.

Q. And have you talked to Khalid a lot about what happened?
A. When? What time.

Q. Anytime after it happened. Have you talked to him a lot of times?
A. No.

Q. And what does Khalid do?
A. What do you mean what does he do?

Q. I'm sorry. What is his job?
A. A lawyer.

Q. Is he an important man?
A. Yes.

Q. And Khalid was present when you gave some interviews wasn't he?
A. Yes.

Q. And do you remember when you were on TV?
A. No.

Q. You remember we were coming and filming you with cameras like these?
A. No.

Counsel conferred with co-counsel.

DO: Counsel, are you going to be taking a few minutes, or are you ready?

DC [LtCol Vokey]: I'm ready, ma'am.

DO: Okay.

Questions by the defense (continued):

Q. All right, Safah. I want to show you something that was on the TV; okay?

DO: Is this the same --

DC [LtCol Vokey]: Exact same exhibit. I think I'm just going to end up, when we are finally done with this it, just give you this. That would be easier.

Okay. For the record, I am showing the witness the CNN disk of discovery that we used in a couple of other -- for the two other depositions as well.

The defense counsel played the video for the witness.

Q. Safah, is that you on or about TV?
A. Yes.

Q. Was that you talking?
A. I don't remember.

Q. Do you remember that now?

DO: Can you translate what she just said.

INTRPTR: I wasn't paying attention.

DO: Okay. Ask her to repeat what she just said.

WIT: I didn't hear what it says there.

Q. Do you remember when you gave this interview?
A. No.

Q. But that is you?
A. Yes.

Q. And where did this -- where did you do this interview?
A. I don't remember.

Q. And who is there?
A. I don't remember.

Q. Well, who was talking to you?
A. I don't remember.

Q. And was Khalid present?
A. I don't remember.

Q. You don't remember anything about this?
A. No. I don't remember this interview.

Q. But you did do this interview, didn't you?
A. I don't remember.

Q. Is that you?
A. The picture is not clear, but according to the look.

Q. Okay. Let me play it again.

The defense counsel played the video for the witness.

Q. Was that you?
A. No.

Q. That's not you?
A. The picture is me, but I don't remember.

Q. Safah, whose idea was it for you to do that interview?
A. This?

Q. Yes.
A. I don't know.

Q. I'm sorry. You don't know?
A. I don't know.

Q. Did someone take you to be interviewed?
A. I don't remember.

Q. Did you go find the reporter yourself?
A. I don't remember any interview.

Q. Are you saying that that was not you?
A. No. That's me. I didn't know my look when I was at that age.

Q. Was that at your uncle's house?
A. I don't remember.

Q. Did you remember saying that you wanted Americans tortured and killed?
A. I don't remember.

Q. And then you want the Americans out of your country?
A. You mean I said that?

Q. Yes. You said that. That was you on the TV.
A. I don't remember.

Q. You don't remember saying that?
A. No. I don't remember.

Q. Did someone tell you to say that?
A. I don't remember. But nobody told me at all.

Q. Did anyone tell you what happened in your house?
A. When?

Q. Has anybody ever tried to tell you what happened in your

house?
A. No.

DC [LtCol Vokey]: That's all the questions I have.

DO: Counsel, do you have any questions?

TC [Maj Erickson]: Yes, ma'am, just a few.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Safah, do you remember me from last year in another interview?
A. I remember the look.

Q. And you stated earlier that nobody asked you to come to the U.S.?
A. No.

Q. Do you want to come to the U.S. and testify at this trial?
A. I don't know.

Q. Would you come if you were able to?
A. I don't know.

Q. Who do we need to ask to see if you can come to the United States?
A. My uncles.

Q. And who are your uncles?
A. Mohammed Sayed (ph) Yaseem.

Q. Can you decide on your own if you can come to the United States?
A. Not saying whose going to come with me, but I have to take their permission.

Q. If they say, yes, will you come to the United States?
A. Yes.

Q. Do you remember the question when you were asked about the Iraqis male voice that you heard after the second time you woke up in the room?

DC [LtCol Vokey]: I think that misstating the evidence. Make

sure that he was an American who spoke Arabic.

Q. Do you remember the Arabic -- let me rephrase that. Do you remember the second time you woke up from the second time you fainted?
A. What do you mean remember?

Q. You said that you heard a male voice do you remember that?
A. Yes.

Q. And the male voice spoke Arabic?
A. Yes.

Q. And did you see who was speaking?
A. No.

Q. Did you recognize the voice?
A. The voice was clear and it was a man's voice.

Q. Did you know the person who spoke?
A. No. You mean I know the way he looks or who he was?

Q. Do you know who he was?
A. I didn't see his face, but from the -- what he was wearing, he was American and he was carrying a weapon.

TC [Maj Erickson]: That's all I have got.

Safah, thank you very much. And I am sorry for your loss.

DO: Any other questions by either party?

TC [Maj Erickson]: None from the government, ma'am.

DO: Is the witness subject to recall?

TC [Maj Erickson]: Yes, ma'am.

DO: This concludes the deposition.

Thank you very much, Safah Yunis Salim Rasif for your testimony. We appreciate it.

And she's free to go.

Translate that we can call her back and she is subject

to recall.

The interpreter did as directed.

WIT: When? What time?

TC [Maj Erickson]: Saturday at 0900.

WIT: With Mr. Khalid?

TC [Maj Erickson]: That's fine. We're done.

DO: Counsel, what did you say? I'm sorry.

TC [Maj Erickson]: We need to change tapes, ma'am.

DO: Okay. He needs to change tapes.

While we are changing tapes, I just want to ask counsel if they want -- does counsel for the prosecution want to hold on to the exhibits until we continue through direct or how do you want to proceed with this?

TC [Maj Erickson]: Ma'am, you don't want to be custodian of the exhibits --

DO: I'll be glad to be custodian of the exhibits. I just wanted to see because we are not finished with all of the depositions if you -- how did you want to do this?

TC [Maj Erickson]: We can give them to Staff Sergeant Jordan.

DO: Okay. Thank you.

TC [Maj Erickson]: They're ready. We're on.

DO: Counsel, would you state for the record what you just said so the interpreter can translate.

TC [Maj Erickson]: Yes, ma'am. 0900 on Saturday, we will need for Safah to return.

DO: Thank you very much. And we are off the record.

The deposition recessed at 2115, 21 February 2008.

The deposition opened at 1247, 22 February 2008.

DO: We are back on the record. This is the deposition in the case of *United States versus Staff Sergeant Frank D. Wuterich* will come to order.

The time now is 1247 on 22 February 2008.

With counsel for the prosecution and the defense stipulate as to the previous matters that were covered in the previous depositions, or do you want me to go through the script again.

TC [Maj Erickson]: Ma'am, the government will stipulate --

DC [LtCol Vokey]: The defense will stipulate. I just want to also state that the same parties are present during the previous depositions are again present, with the addition of Staff Sergeant Wuterich, the accused, is also present for the deposition today.

DO: Okay. Thank you.

Does the accused waive me going through the questions about his rights and --

DC [LtCol Vokey]: Yes, ma'am. The accused waives the reading.

DO: Okay. Thank you very much.

The interpreter was duly sworn.

DO: We are still continuing with the depositions in this matter.

Does the government have any other witnesses that they want to depose?

TC [Maj Erickson]: Yes, ma'am. The government calls --

DC [LtCol Vokey]: Ma'am, before we start, I know we have four witnesses left in this deposition as well and -- Chessani depositions are going another day. His investigator is here. And if it's All right. With the government, he would like to -- while we do the depositions, interview the ones out in the hallway.

DO: There's no problem as long as they keep it down. Is

there a problem with them using the --

TC [Maj Erickson]: It's --

DC [LtCol Vokey]: They will go off to the table over their across the way, so we won't here them, ma'am.

DO: Okay. That's great. That's fine.

The witness entered the courtroom.

DO: Please be seated.

The witness did as directed.

Khalid Salman Rasif Hussayn Al-Anzi, an Iraqi civilian, was called as a witness by the prosecution, was duly sworn, and testified substantially as follows:

DO: Please have a seat.

The witness did as directed.

DO: Sir, is it correct to call you Mr. Al-Anzi.

WIT: No problem.

DO: Thank you.

Mr. Al-Anzi, my name Colonel Henderson, I am the deposition officer. And everything that's being said in this room is being interpreted by the interpreter and is being reported by the court reporter.

I understand that you are a lawyer and so you understand this formality, but it is very important that the interpreter be able to completely finish the translation before you talk and it's very important that the court reporter be able to get down everything you said in the room.

During these proceedings counsel for the prosecution and counsel for the defense will be asking you questions, and it's very important that they be able to finish the entire question before an answer is given.

Enclosure 12:

Video Deposition of:

Khalid Salman Rasif Hussayn Al-Anzi

*DVD Video will be sent Via FedEx due to the large size of the video.

there a problem with them using the --

TC [Maj Erickson]: It's --

DC [LtCol Vokey]: They will go off to the table over their across the way, so we won't here them, ma'am.

DO: Okay. That's great. That's fine.

The witness entered the courtroom.

DO: Please be seated.

The witness did as directed.

Khalid Salman Rasif Hussayn Al-Anzi, an Iraqi civilian, was called as a witness by the prosecution, was duly sworn, and testified substantially as follows:

DO: Please have a seat.

The witness did as directed.

DO: Sir, is it correct to call you Mr. Al-Anzi.

WIT: No problem.

DO: Thank you.

Mr. Al-Anzi, my name Colonel Henderson, I am the deposition officer. And everything that's being said in this room is being interpreted by the interpreter and is being reported by the court reporter.

I understand that you are a lawyer and so you understand this formality, but it is very important that the interpreter be able to completely finish the translation before you talk and it's very important that the court reporter be able to get down everything you said in the room.

During these proceedings counsel for the prosecution and counsel for the defense will be asking you questions, and it's very important that they be able to finish the entire question before an answer is given.

ENCLOSURE (13)

The interpreter is going to try to literally translate everything, all of the questions that are being asked. But yet if there is a question that is being asked that you do not understand, please let the interpreter know and the interpreter with say in English that you do not understand and then the attorney will be able to re-ask the question.

Do you have questions?

WIT: No.

DO: During the testimony, there may be occasions when one of the attorneys has an objection or want to make a statement on the record. If they make such a statement or start to talk while you are talking, please immediately stop talking. We want the attorney to be able to say it for the record, what their objection is. And after the attorney states their objections, you will be able to finish what you are saying.

If you were not able to finish what you were saying and somebody starts talking or asking a question, please make sure that you tell the interpreter that you weren't finished with your testimony so he will know, and the interpreter with say that in English, so both of the attorneys will know that you are not finished.

If you need to take a break to use the restroom or for some water, just let us know, it will not be a problem.

Do you understand?

WIT: Yes.

DO: Thank you.

Counsel, you may proceed.

TC [Maj Erickson]: Yes, ma'am.

DIRECT EXAMINATION

Questions by the prosecution:

Q. Good morning. As you know, my name is Major Daren Erickson, we met before?
A. Uh-hmm.

Q. Mr. Al-Anzi, is Khalid Salman Rasif Hussayn Al-Anzi your full name?
A. Yes.

Q. Are you known by any other name?
A. No.

Q. And where do you currently live?
A. Haditha Al Supun (ph).

Q. Now, do you have a street address?
A. Yes. High Alhay Alaskary Street.

TC [Maj Erickson]: Can we get a spelling of that.

INTRPTR: I'm just going to ask him for it.

DO: Can you please put that spelling phonetic he for the record for the court reporter.

INTRPTR: Yes. He lives next to the street that leads to Alhay Alaskary is spelled, A-L-H-A-Y A-L-A-S-K-A-R-Y.

DO: Thank you.

Counsel?

Q. How long have you lived at that address?
A. From the time I was born.

Q. And how old are you right now?
A. I was born in 1974.

Q. Have you ever left Haditha, Iraq?

INTRPTR: I'm sorry?

Q. Have you ever left Haditha, Iraq for vacation or for any other reason?
A. Just for when I studied in Baghdad four years, from 1992 until 1996.

Q. And what is your occupation or your job?
A. A lawyer.

Q. And how long have you been a lawyer?
A. Ten years.

Q. Are you currently on any medication today?
A. No.

Q. Do you have any physical or mental impairments that may impair your ability to testify today?
A. No.

Q. Has anybody told you what to say today?
A. No.

Q. Mr. Al-Anzi, I want to take your attention to 19 November 2005.

Do you understand that date?
A. I'm sorry. What's the date?

Q. Nineteen November 2005?
A. Yes.

Q. And what is that date in Iraq?
A. It's considered as a black day in the history of Haditha.

Q. Is the year 2005 recognized?

INTRPTR: I'm sorry?

Q. The year 2005, is that the year that it is in Iraq?
A. What's the question?

Q. 2005, is that the year that is recognized in Iraq?
A. Yes, it's recognized.

Q. Do you remember where you were on the morning of 19 November 2005?
A. Yes. I was sleeping in my house which is about 250 meters away from the other house where the event happened.

Q. You said you were sleeping. What time did you wake up?
A. I woke up because of an explosion at 0915 in the morning -- 0715 in the morning.

Q. Did you see the explosion?
A. I didn't hear explosion, but it was thick because my house shook by the explosion. And after the explosion, in minutes, I heard gunfire and shouting of the Marines.

Q. Now, right after you heard the explosion and you woke up, did you go outside of your house?
A. Into the garden of the house just to see what happened. When I heard the gunfire from the Marines, I went back to the house.

Q. Okay. You said you heard the gunfire from the Marines. Did you see Marines?
A. Yes. I saw some of them.

Q. And where were they?
A. They were close to the place of the explosion.

Q. Okay. And do you remember where that explosion was?
A. It was in the street that leads to Alhay Alaskary.

Q. And what do you call that street?
A. In Iraq, we don't call streets, we just call it like for the neighborhood.

Q. Okay. And you said that you heard Marines shooting. How do you know it was Marines shooting?
A. Because during that explosion -- this is not the first explosion that happened in Haditha. The soldiers of the occupation, they started shooting toward targets or just generally.

[inaudible] started distinguished the sound of explosion or weapons.

Q. Mr. Al-Anzi, do you know Kamesa Toma Ali (ph)?
A. Yes. She's my maternal aunt.

Q. And do you know where she lives?
A. Yes.

Q. And where did she live?
A. In Haditha in that house with her husband called Abdul Hameed Hassayn Ali. She was killed with the other seven members of her family.

Q. Okay. Her house where is that in relation to your house that morning?
A. Her house is located on the hill and we are in the valley.

Q. About how far are you?
A. From 250-meters to 300 meters. Because their house --

from the other side of the explosion and this is the explosion, this is their house. So it's basically adjacent.

Q. Do you know directions north, south, east and west?
A. Yes.

Q. Okay. So you are 250 to 300 meters to the north, south, east or west from your aunt's house?
A. West of his house.

Q. So your aunt's house is 250 to 300 meters request of your house?
A. Yes. [inaudible].

Q. Say that again.
A. My house is located by the river, [inaudible] west of my house 250 to 300-meters.

Q. Okay.

TC [Maj Erickson]: Let's make the record clear. Mr. Al-Anzi house is 200 -- I'm sorry. The aunts house is 250 meters to 300 meters west of Mr. Al-Anzi house.

DO: Would you repeat that.

INTRPTR: I'm sorry. His aunt's house or his house it.

TC [Maj Erickson]: Well, what you just said -- it sounded like you said his aunt's house is west of his 250 to 300 meters west.

WIT: To be more precise and fair for you, my house is located, where I am sitting right now and her house -- my aunt's, her house is located where you are sitting. And the distance between me and you is 250 to 300 meters.

Questions by the prosecution (continued):

Q. After the explosion and after you said you heard shots, did you go outside your house to see what was going on?
A. Like I said I was in the garden, in the house garden. And then when I heard the explosion I went there. And when I heard the gunshots, I went back in the house.

Q. While you were outside could you see your aunt's house

from where you were at?

A. When I was inside the garden, I can see my aunt's house.

Q. And what did you see at your aunt's house when you were outside?

A. It wasn't anything because the moment when I left the house it wasn't anything.

Q. Who all lived in your aunt's house?

INTRPTR: Repeat the question please.

Q. Who all lived in your aunt's house?

A. Her husband Abdul Hameed Hussayn Ali, her kids Jaheed Abid Hameed Hussayn and his wife called Hibba Abdulla Abid and also his son called Waleed Abdul Hameed Hassayn, and his wife which is my sister Esmon Salman Sayif and also their kids, Eman Waleed Abdul Hameed, Abdul Rahman Waleed Abdul Hameed, Asya Waleed Abdul Hameed, Abdulla Waleed Abdul Hameed.

Q. Mr. Al-Anzi, what happened after you went back into your house?

A. After the explosion, after an hour, the American left the place of the explosion and people went back to their daily life. But what happened on that live date [sic] we heard gunshots which were not constant we heard some explosions, but not as big as the real explosions, and stayed until, like, 12:00. After that [inaudible] we at lunch at our house.

Around 2:30 to 3:00 here, we heard a knock on my door -- my house door. I went outside to see what's happening. I saw Anwar Hajidge Toma (ph) and Safah my cousin.

Q. And what happened after you saw your cousin?

A. I told him what's going on in the area. He told me that the Marines killed my aunt -- family, and the family of my cousin Yunis Salim Rasif.

Q. Okay. Yunis Salim Rasif, where did he live in relation to your house?

A. The same distance that between my house and my aunt's house because his house was four or five meters away from my aunt's house.

Q. Did you know who lived in Yunis Salim Rasifs' house?

A. Yes.

Q. Who was that?
A. Yunis Salim Rasif head of the house, his wife Ida Yaseem Akmed Badi (ph). And his kids are Yunis Salim, Safah Yunis Salim, Sefah Yunis Salim, Mohammed Yunis Salim, Zana Yunis Salim (ph) and Asya Yunis Salim.

Yunis Salim Rasif was for -- in a surgery a few days ago.

Q. Who did now?
A. The wife of Yunis Salim Hussayn. Her sister Rida Haseem (ph) came to help her to manage -- help them out in the house temporarily until she gets well. I would just like to explain a point.

DC [LtCol Vokey]: Objection. Nonresponsive.

DO: Counsel? Do you want the witness to continue?

TC [Maj Erickson]: Yes, please.

Questions by the prosecution (continued):
A. I understood from Anwar Hajidge Toma that was my cousin. I only knew or learned about the Marines -- the American Forces killed my aunt's family and my cousin's family.

Q. Mr. Al-Anzi, did you personally see Marines go into either one of those houses?
A. No, I did not.

Q. Okay. Did you see anybody enter those houses that day?
A. No. Not these two houses. I saw some of the Marines were on the roof tops near the explosion.

Q. Okay. Did you have a opportunity that day to go into any one of those two houses?
A. I tried to meet my cousin, Salid Hajidge Toma to go and see what's really happened, but we saw the snipers on the roof. We were afraid they were going to fire at house. That's why we went back to the house.

Q. Did you ever have a opportunity to go into those houses after 19 November 2005?
A. Yes. The next day. I would like to explain a point. [inaudible] where I learned from Hajidge Toma about how he knew that the Marine killed my aunts and family and my cousins family. He told me that --

DC [LtCol Vokey]: Objection. Hearsay.

WIT: -- Sayif --

DO: Go ahead counsel.

DC [LtCol Vokey]: Go ahead.

DO: If you just want to continue that's --

TC [Maj Erickson]: Go ahead.

Questions by the prosecution (continued):
A. He told me that Yaseem Salim Sayif, he left his house --

DC [LtCol Vokey]: Objection. Hearsay.
A. -- witnessed.

DO: He stated his objection, so you can go ahead and continue the translation.

Did you finish the translation?

INTRPTR: No.

WIT: -- with his knees.

INTRPTR: I'm getting confused here.

DO: Okay. Ask him to repeat what he said please.

WIT: Anwar Hajidge Toma told me --

DC [LtCol Vokey]: Objection. Hearsay.

DO: Noted.

WIT: -- that Yaseem Salim Sayif, which is my cousin that he left his house without his brother. Her name a Safah Yunis Salim and his wife --

DC [LtCol Vokey]: Objection. I object to all of this testimony and it's all hearsay, and he's not perceived -- the witness is not perceiving anything.

DO: The objection is noted for the record.

TC [Maj Erickson]: Continue, please.

WIT: He went to his family's house which is between my house and his house --

DC [LtCol Vokey]: Objection. Narrative. The witness is just telling whatever story he wants to tell for the last five minutes here. It's not responsive at all and it's narrative.

WIT: -- he went to his family's house which is only one house away from my house. There is only one house between my house and his house.

We asked him what had happened in my aunt's house and my cousin's house.

Questions by the prosecution (continued):

Q. Mr. Al-Anzi, I'm going to stop you now. Let's get more into this right now. I want to get back to when the first time you actually went into your aunt's house and your cousin's house.

Can you take us to the time when you first went into your aunt's house. Do you remember that time?

A. The day I went to my aunt's house -- my cousin's house was the second day of the event.

Q. Okay. Who -- about what time of the day was it when you went to your aunt's house first?

A. It was 7:45 in the morning.

Q. Okay. And was anybody with you went you went to the house?

A. My brothers and my cousins to check on the dead in the living rooms.

Q. Okay. And did you find any dead or living ones in the house when you left?

A. I didn't found any corpse or anybody alive. We found chaos in the house and the blood covered most of the house.

Q. Now, you said you -- hold on a second.

DC [LtCol Vokey]: Objection.

TC [Maj Erickson]: I'm going to stop you for a second.

Q. You said you didn't see any dead or living in the house. Do you know where they were?
A. I thought that the American Forces took them to Haditha hospital.

DC [LtCol Vokey]: Objection. Speculation.

Q. Did you know where the dead went?

DC [LtCol Vokey]: Objection. It's vague as to time.
A. No.

Q. Did you find out at any point where the dead went?
A. I just guessed. I did not find out. We rode in the cars to Haditha hospital, we find the corpses laid there.

Q. And who did you find at Haditha hospital?
A. I find all the corpses. It was 24 dead ones --

Q. Okay.
A. It was put in bags [inaudible].

Q. Okay. And you said there was 24 bodies. Did you look at all 24 bodies at the Haditha hospital?
A. Yes. It was in Haditha hospital. It was in the coolers of Haditha hospital.

Q. Did you personal see every single body --
A. They were on the ground. I saw them with my own eyes. And we started to look for the dead bodies that belong to us.

Q. And did you find the dead bodies that belonged to you?
A. Yes.

Q. And who were they?
A. It was 15 dead bodies. We me at that moment was my brothers, my cousins and my neighbors. We find 14 dead bodies that we could identify.

Q. Hold on a second.

TC [Maj Erickson]: Go ahead and translate what he just said right there.

INTRPTR: I just did.

DO: He said he just did.

TC [Maj Erickson]: Okay.

Q. Now, you said 14 dead bodies. Can you tell me the 14 dead bodies --
A. Abdul Hameed Hussayn Ali Misa--

INTRPTR: Do I have to translate that since he's saying them in Arabic?

DO: If you can -- can you say them because for the record we will have them.

INTRPTR: Repeat it back, ma'am?

DO: Yes, please repeat it back.

WIT: Abdul Hameed Hussayn Ali, Misa Toma Ali, Jaheed Abdul Hameed Hussayn, Rasheed Abdul Hameed Hussayn, Esman Salman Sayed (ph) Abdulla Waleed Abdul Hameed, Yunis Salim Sayif, Nor Yunis Salim, Seba Yunis Salim, Hamed Yunis Salim, Zana Yunis Salim, Asya Yunis Salim, Ida Yaseem Rahman, Huda Yaseem Rahman.

After we took the 14 dead bodies and we put them in the [inaudible] --

Q. Okay. Hold on one second. Now, prior to that, you said you were going to go recover 15. Yes. I just want to explain this way?
A. Well, hold on --

DC [LtCol Vokey]: Objection.

DO: Please tell the witness that when the attorney start to talk for him to stop.

The interpreter did as directed.

DO: If he is not finished answering the question, to let us know and we will give him the option to finish. However, his testimony is to be confined to answering the question. So he can't tell a narrative, he can only tell the question that is put to him.

Ask him if he understands.

WIT: I understand.

DO: Counsel, I'm sorry. Go ahead.

Questions by the prosecution (continued):

Q. You said earlier that you went there for 15 bodies; that's correct?
A. Yes.

Q. And you named 14. Who is the 15th.
A. It belongs to Waleed Abdul Hameed Hussayn. My brother which is the husband of my sister.

Q. And were you able to recover the 15th body of Waleed?
A. Yes.

Q. And can you tell us where he was?
A. He was with the dead bodies, but he was just disfigured and [inaudible].

Q. And what?
A. Basically burned -- severely burned.

Q. After you went to the hospital and look at the bodies, what did you do next?
A. We put the bodies in a Kia vehicle.

Q. Kia vehicle?
A. Yes. And we brought it to my uncle's house called -- and his name is Maaed Sasin Hameed (ph).

Q. And what did you do next?
A. We put them in coffins and we wrapped them in [inaudible] to bury them.

Q. And did you bury them?
A. Before I buried them, an American convoy came on patrol with [inaudible] --

DC [LtCol Vokey]: Objection. Nonresponsive.

TC [Maj Erickson]: Go ahead.
A. There was a photograph. I talked to him --

DC [LtCol Vokey]: Objection. Again, nonresponsive. The question was did you bury him.

Questions by the prosecution (continued):

Q. Mr. Al-Anzi, after you took the bodies to your uncle's house what happened next?
A. We put -- we brought them coffins then we took them to the cemetery, then we buried the bodies.

Q. Okay. And after you buried them, about how many days after the event did you bury them?
A. The next day.

Q. What, if any, procedure do you go through prior to burying family members?
A. We watched the person, we wrapped the coffins with a white sheet, and we sprayed with --

DC [LtCol Vokey]: Objection, relevance.

DO: The objection is noted.

WIT: -- and we sprayed the body with some kind of cologne or fresh smell and then we take it to the grave.

Q. And did you do that this time with the 15 bodies you had?
A. No we did not. We just did not want them -- because in our religion, we only put the coffin on them.

Q. Why?
A. We consider them as martyrs.

Q. Mr. Al-Anzi, did you have another opportunity to visit the house of your aunt?
A. After what happened?

Q. Yes.
A. Yes, I went.

Q. Who was that?
A. That -- that afternoon of the second date after we buried the bodies.

Q. Okay. And who went with you that time?
A. There was a person with me who worked as a photographer.

Q. Okay. Anybody else?
A. He went with me.

Q. And why did you take a photographer?
A. To take a picture of the crime scene. I was afraid that the crime scene would be destroyed.

Q. And what were you going to use the pictures for that was being taken?
A. To take a picture of the blood, where the fires -- the place of rounds -- where the round hit.

Q. And did you just do at that your aunt's house?
A. My aunts house and my cousin's.

Q. And your cousin is who again?
A. Yunis Salim Rasif.

Q. And did you, in fact, take pictures in both of those houses?
A. Yes.

Q. And did you see those pictures after they were taken?
A. Yes.

Q. What did you do with those pictures?
A. I put it down -- I burned it to a CD.

Q. And what did you do with the CD?
A. When the first investigation started of the event, I gave copies to the investigators.

Q. Do you remember who that was?
A. His first name is Mark Cranfield.

Q. Did you give those photos to anybody besides Mr. Cranfield?
A. Yes. I gave it to the person in charge of civil affairs, Major Hyatt.

Q. And why did you give them to Major Hyatt?
A. Because Major Hyatt was the person in charge of the civil affairs. The American Forces asked somebody to come from the people -- from the family were the people died someone he thought would present them.

Q. Okay. Hold on. Hold on a second.
A. Okay, sir.

TC [Maj Erickson]: May I approach the witness?

DO: You may proceed.

TC [Maj Erickson]: Handing the witness what's going to be marked as Deposition Exhibit 1.

Q. Mr. Al-Anzi, have you seen that photo before?
A. Yes.

Q. And what is that photo of?
A. My sister's room Esman Senman (ph) Sayif.

DO: Counsel can you identify the photo number for the record, please.

TC [Maj Erickson]: It's going to be just about, ma'am, I don't have a --

DO: Okay.

TC [Maj Erickson]: -- I'm just going to mark it.

I'm going to take that from the witness and enter it in as Deposition Exhibit 1.

Q. Mr. Al-Anzi, I'm going to hand you what has been marked as Deposition Exhibit 2. And does that photo look familiar to you?
A. Yes.

Q. And what is that a photo of?
A. The living room of my cousin Abdul Hameed Hussayn.

Q. Let me take that.

TC [Maj Erickson]: Now, handing the witness what's going to be marked as Deposition Exhibit 3.

Q. Mr. Al-Anzi, does that photo look familiar to you?
A. This bed was for my uncle. He sleeps on it. He's a very old person.

Q. Does that photo look familiar to you?
A. Yes.

Q. Is that -- is that a photo that you saw that you took that day?
A. We took general pictures of the whole house.

Q. Okay.

TC [Maj Erickson]: There's another of that, it's going to be marked as Deposition Exhibit 4.

Q. Does that look familiar to you?
A. Same living room of my cousin's house Abdul Hameed Hussayn Ali.

Q. And that accurately reflects what you saw that day when you were in there taking photographs?
A. Yes.

TC [Maj Erickson]: Now handing the witness what's going to be marked as Deposition Exhibit 5.

Q. Does that photograph look familiar to you, Mr. Al-Anzi?
A. It's just a house of -- the ceiling of my cousin's house.

Q. Which cousin?
A. His uncle Abdul Hameed Hussayn.

Q. Okay. Does that accurately reflect what you saw that day when you went to take the photographs?
A. Yes.

TC [Maj Erickson]: Handing you what's going to be marked as Deposition Exhibit 6.

Q. Mr. Al-Anzi, does that look familiar to you?
A. That's the same living room.

Q. Of what?
A. Abdul Hameed Hussayn.

Q. Does that accurately reflect what you saw that day when you were in there taking photographs?
A. Yes.

TC [Maj Erickson]: Now handing you what's going to be marked as Deposition Exhibit 7.

Q. Mr. Al-Anzi, does that look familiar to you?
A. I have seen this. It's the room of my cousin, Yunis Salim Sayif. That's his bed.

Q. And does that accurately reflect what you saw that day

when you were in there taking photos?
A. Yes.

TC [Maj Erickson]: I'm going to hand you what's going to be marked as Deposition Exhibit 8.

Q. Does that photo look familiar to you?
A. It not very clear, perhaps it's the same room of Yunis Salim Sayif.

Q. Does that accurately reflect what you saw that day in the room?
A. Yes.

TC [Maj Erickson]: I'm going to hand you what's going to be marked as deposition exhibit inside.

Q. Does that photo look familiar to you?
A. Same picture. The bedroom of my cousin use s Salim Sayif.

Q. Does that accurately reflect what you saw when you were in that room that day?
A. Yes.

TC [Maj Erickson]: Handing you what is going to be marked as Deposition Exhibit 10.

Q. Does that photo look familiar to you?
A. Yes. It's the same room.

Q. Does that accurately reflect what you saw that day when you were in there taking photos?
A. Yes. This picture was not taken that date. It was taken a while after that.

Q. What's "a while after that"?
A. About 20 days.

Q. About 20 days after the event?
A. Yes.

Q. And does that accurately reflect what you saw 20 days after the event?
A. Yes.

Q. Were you there when that photo was taken?
A. Yes.

Q. Okay. Who's the person in that picture?
A. I think that's my cousin Mohammed Salim Sayif.

Q. I'll take that from you.

TC [Maj Erickson]: I'm going to hand you another exhibit; that's going to be Deposition Exhibit 11.

Q. Does that photo look familiar to you?
A. Yes the blood was just like that in the bedroom of Yunis Salim Hussayn.

Q. And does that accurately reflect what you saw the day that you were in there taking photos the day after the event?
A. Yes.

Q. And was that photo taken the day after the event?
A. Yes.

Q. Okay. Thank you?

DO: Counsel, can I just have a five-minute break please.

TC [Maj Erickson]: Yes, ma'am.

DO: Thank you.

We are off the record.

The deposition recessed at 1352, 22 February 2008.

The deposition opened at 1404, 22 February 2008.

DO: We are back on the record.

Mr. Al-Anzi, I remind you that you are still under oath.

Counsel, you may proceed.

TC [Maj Erickson]: Yes, ma'am.

Questions by the prosecution (continued):

Q. Mr. Al-Anzi, we left off window me showing you a bunch of photos. I just have a few more to show you. But before I do that, I would like to go back through the people that lived in your aunt's house.

In your previous testimony you named Jaheed, a Rasheed and a Waleed; do you remember that?
A. Yes.

Q. And Jaheed, who is Jaheed in relation to you?
A. My cousin. His mom is Kumesa (ph).

Q. Okay. And how long have you known Jaheed?
A. Since I was four.

Q. And how old was he?
A. He was born 1962.

Q. Okay. And how about Waleed? Who was he?
A. My cousin also from my maternal aunt Sae (ph). And he is the husband of my sister, Esman.

Q. And how long have you known him?
A. Since I was born.

Q. And how old is Waleed?
A. 1969.

Q. Okay. And how about Rasheed? Who was he?
A. Also my cousin from my maternal aunt Seba.

Q. And how old was he?
A. I'm not sure about his age. It's between 1978 and 1979.

Q. Okay. And how long have you known him?
A. Also, since I was born -- since he was born.

TC [Maj Erickson]: Permission to approach the witness, ma'am?

DO: You may proceed.

TC [Maj Erickson]: Handing the witness what's going to be marked as Deposition Exhibit 12.

Q. Mr. Al-Anzi, do you know the person depicted in that photo?
A. Yes.

Q. Who is that?
A. Rasheed Abdul Hameed Hussayn.

Q. Have you seen that photo before?
A. Last year when I came here, yes.

TC [Maj Erickson]: Okay. Handing you what's going to be marked as Deposition Exhibit 13.

Q. Do you know the person in that paragraph?
A. Same person.

Q. And who is that?
A. Rasheed Abdul Hameed Hussayn.

Q. Mr. Al-Anzi, when Mr. Cranfield was here and you gave him the photos that I showed you before, do you remember that?
A. Repeat that question please. I didn't understand.

Q. Before you testified that you had given some -- a photograph disk to Mr. Cranfield, do you remember that?
A. Yes.

Q. Okay. And other than the photos that I gave you, did you give Mr. Cranfield any other photos?
A. I gave him what was the damage in the house -- for the two houses.

Q. Okay. Did you give him any other photos?
A. No.

Q. Have you supplied anybody else with any photos?
A. Just for the two houses, for Mr. Cranfield and Major Hyatt.

Q. Okay. And other than the pictures of the damages of the houses, where there any other photos that you had provided to Major Hyatt --

DC [LtCol Vokey]: Objection. Leading.

Q. What, if any, other photos would you have given Major Hyatt and Mr. Cranfield?

INTRPTR: I'm sorry?

Q. What, if any, other photos did you provide to Mr. Cranfield or Major Hyatt?

INTRPTR: Can he rephrase that question.

DO: He's asking you to rephrase it. Or did you hear him? He said what if any photos -- or pleas rephrase the

question.

Questions by the prosecution (continued):

Q. Were there any other photos that you gave Major Hyatt your Mr. Cranfield?
A. Other than the damaged pictures, no.

TC [Maj Erickson]: Permission to approach the witness, ma'am?

DO: You may proceed.

DC [LtCol Vokey]: Well, I'm going to object to this right here. You just said he provided only those pictures and we're going to show him other pictures without any other foundation? The witness has already said he just provided the pictures that we have already admitted as deposition exhibits.

Questions by the prosecution (continued):

Q. Mr. Al-Anzi, I want to take you back to when Mr. Cranfield was out here. Do you remember that?
A. Yes.

Q. Okay. Did Mr. Cranfield ask you to recover the bodies of your family?

DC [LtCol Vokey]: Objection. Leading.
A. You mean to take the bodies out -- to dig them out?

Q. Yes.
A. Yes, he asked them.

Q. And who did he ask?
A. He asked me --

DC [LtCol Vokey]: Objection. Hearsay.
A. And he asked the members of the victims.

Q. And what did you say when he asked you?

DC [LtCol Vokey]: Objection. Hearsay.
A. We rejected the request.

Q. And why did you reject their request?
A. It's the way of society.

Q. And what do you mean by "it's the way of society"?
A. It was a long period of time. It was like five months from the time we buried the bed bodies and the American Forces trying to take the bodies of the kid and the women and take them to America to examine the bodies. That's why the answer was rejected.

Q. Mr. Al-Anzi, what is your relationship now to the remaining members of the families?
A. They're the family of my aunt. The rest of them -- the remainder of them was Iman, Abdul Rahman and Asya. They are the kids of my sister.

As far as Safah, she is my -- she is the daughter of my cousin.

Q. Okay. And do you have a professional relationship with them as well?

INTRPTR: I'm sorry. What was that.

Q. Do you have a professional relationship with them as well?

INTRPTR: He has to rephrase that.

DO: He needs you to ask you to rephrase the question. He doesn't understand.

Questions by the prosecution (continued):

Q. You stated earlier that you were a lawyer?
A. Yes.

Q. And is that your current job?
A. Yes.

Q. Do you have a relationship with regards to your job with those survivors?
A. Yes. They appointed me to follow on this case.

Q. And what does that mean?
A. It's a very hard story. Safah and her grandmother or her uncle to come and follow up on this issue [sic] and I'm an attorney. They come to me for their personal needs. They refuge to me with their big thing and small things.

Q. And, Mr. Al-Anzi, are you willing to come to the United States to testify?
A. At the time, I need to talk to my uncles about this.

Q. Have you been asked before to come to the United States?
A. Yes.

Q. What was your answer before?
A. At that time I said no -- or I rejected. Our request was to bring the trial here to Haditha.

TC [Maj Erickson]: Excuse me for a second.

Counsel conferred with co-counsel.

TC [Maj Erickson]: I'll pass the witness, ma'am.

DO: Counsel, do you have any questions for this witness?

DC [LtCol Vokey]: Yes, ma'am, we do. I think it will probably take some time, probably not as long as Major Erickson. I don't quit talk that much, but it will take a while.

So I ask for a break, a five or ten minute break.

DO: Okay. Fine, we will take a break. We are off the record.

The deposition recessed at 1441, 22 February 2008.

The deposition opened at 1434, 22 February 2008.

DO: We're back on the record it is approximately 1434. And, Mr. Al-Anzi, I will remind you that you are still under oath.

Counsel, do you have any questions?

DC [LtCol Vokey]: Yes, ma'am.

DO: Thank you.

DC [LtCol Vokey]: Khalid, my name is Lieutenant Colonel Vokey, I'm also an attorney.

CROSS-EXAMINATION

Questions by the defense counsel:

Q. How long have you been a lawyer or attorney?
A. Ten years.

DO: Please speak up for the court reporter. Everybody, please speak up for the video transcriber as well.

Q. Describe what you do as a lawyer.
A. My specialty is in Haditha it's civil cases, and also for personal cases for, like, divorce and marriage and criminal cases. I worked all of that.

Q. How many lawyers are in Haditha?
A. Fifteen lawyers.

Q. So lawyers are pretty important positions in Haditha?
A. They are very important -- lawyers.

Q. Did you work with the other lawyers?
A. I work by myself.

Q. You said you do a lot of civil cases?

INTRPTR: Tell him to --

DO: The interpreter doesn't understand what you said. Could you please restate it, counsel.

Q. Do you do a lot of civil cases as a lawyer?
A. Yes, civil cases, personal cases, marriage and divorce cases.

Q. And do you do court a lot?
A. Constantly.

Q. And you deal with the government a lot?
A. Yes.

Q. The city government?
A. Yes.

Q. And the city council?
A. I'm a member of the city council, yes.

Q. Do you work with the mayor?

A. We are a different organization, an independent organization than the mayor office.

Q. Since the Americans have come to Haditha, have you been part of the city council?
A. Yes.

Q. How long have you lived in Haditha?
A. Since I was born.

Q. So as a lawyer in Haditha, you are a pretty important person?
A. Yes.

Q. How long have you lived in the house that you now live in?
A. Since I was born, 34 years.

Q. So your neighbors all know who you are?
A. Yes.

Q. Do a lot of your neighbors use you as a lawyer if they need one?
A. Many of them.

Q. And do you know most of your neighbors?
A. Of course.

Q. And did you know Armad Juwad Hamsa?
A. Yes.

Q. And who is he?
A. Armad Juwad Hamsa was the mayor for the city council -- the former mayor city council of Haditha.

Q. What happened to Armad Juwad Hamsa?
A. He's detained by the U.S. Forces.

Q. And do you know his brother?
A. No.

Q. Do you know where his brother is?
A. No, I don't.

Q. Why was Armad Juwad Hamsa detained by the U.S. Forces?
A. I really don't know the reason.

Q. It's because he's an insurgent, isn't he?

A. I have no clue.

Q. You have no idea?
A. I have no idea about the subject. My relation that connects me with him was, he was the mayor, the head of the city -- the local city council and I was a member.

Q. Has there been a lot of fighting in Haditha?
A. Yes.

Q. A lot of IEDs?
A. Yes.

Q. And have you seen a lot of those IEDs?
A. With my own eyes, no. But when it explodes, or most of the times the American Forces come and detonate the bombs.

Q. And there have been IEDs that have detonated and hurt Americans too; right?
A. Just that IED that went off in my area and hurt the Americans on November 19th 2005.

Q. And you know who set off the IED on November 19th 2005?
A. No, I don't know.

Q. You have no idea?
A. I have no idea about the subject.

Q. You are very well known in your neighborhood though aren't you?
A. Yes.

Q. And you know a lot of your neighbors, don't you?
A. Yes.

Q. So were there insurgents in your neighborhood on November 19th?
A. Yes.

Q. In the houses in your neighborhood?
A. No.

Q. No?
A. We noticed their presence in the streets.

Q. I'm sorry. Can you repeat that?

DO: Court reporter could you repeat that.

Court Reporter: Yes, ma'am. "We noticed their presence in the streets."

Q. You saw insurgents in the streets?
A. Yes. We always see the insurgents in Haditha. Sometimes the American Forces emerges and the insurgents leave. And when they leave, the Americans leave and then they will come out.

Q. And are you aware that insurgents often stay or hide in houses?
A. In Haditha nothing -- no case like that happened. We just hear about them hiding in the areas surrounding Haditha. And I did not see it with my own eyes.

Q. You don't know of any insurgents in the town of Haditha?
A. They usually wear masks and we don't know them.

Q. But there had to be an insurgent right there in your neighborhood on November 19th didn't it?

TC: Objection. Argumentative.

DO: Your objection is noted.

WIT: In Haditha, there were insurgents. Who else would have detonated the IED?

Q. Someone in your neighborhood detonated the IED.
A. I don't think a person that lived in that area will hurt his people.

Q. Do you know who fired at the Marines on November 19th 2005?
A. Nobody fired at the Marines on November 19th. I did not see anybody firing at them.

Q. How do you know no one fired at the Marines?
A. Only the Marines were present in the area.

Q. So there were no insurgents in the area?
A. I have no idea -- I have no knowledge.

Q. So who set off the IED?
A. I said, I don't know.

Q. So could it have been somebody who lived in the neighborhood?
A. I told you, I don't think anybody would want to hurt his neighbor.

Q. Somebody would want to hurt the Americans.
A. Maybe.

Q. Did you know those men killed in House 4?

INTRPTR: I'm sorry. What's House 4?

DO: Could you please --

TC: I'm going to object to relevance on that.

DO: Your objection is noted.

Counsel, could you restate the question.

Q. Did you know the men who lived in House Number 4?
A. You mean, the house that belonged Ayed Ackman (ph)?

Q. Yes.
A. No. I only know their brother Marwan (ph) because he was an engineer in that building the City of -- the City of Haditha. The relationship that connected with me and him -- I'm a lawyer and he was an engineer.

Q. And did you represent the families from House Number 4?

TC: I'm going to object.

DO: Counsel, you had an objection?

TC: Objection to relevance again, ma'am.

INTRPTR: Can he answer?

DO: Yes.

WIT: After the event, they asked me to represent them in this case.

Q. And did you represent the families from the men who were killed at the car at the roadside?
A. Yes. They came to my house, and they also requested that for me.

Q. How much money do you make a year?

TC: Objection. Relevance.

DO: Please ask him.

WIT: As far as me?

Q. Yes.
A. A salary? You mean, for me as a lawyer?

Q. Yes?
A. About 2 millions [sic].

DO: For the record, did you want to clarify it when he says "2 millions" in currency?

DC [LtCol Vokey]: Yes, 2 millions in what?

INTRPTR: Two millions in --

DC [LtCol Vokey]: Ask him 2 millions in what kind of money.
A. Two million dollars. But do you mean the whole year -- the salary of the whole year?

Q. Yes.
A. Because I also have money from -- I'm a member of the city council. You mean, just the money from my lawyer career or all of my salaries?

Q. Just as a lawyer.
A. Just generally 2 millions to 3 millions a year [sic] a year.

Q. Is that U.S. dollar's?
A. Iraqi denari. If you would like for me to tell you the reason --

Q. No. How much do you make for being on the city council?

TC: Objection to relevance on that as well.

WIT: The money I receive?

Q. Yes.
A. Nine hundred thousand denari a month. It used to be not more than 90,000 then they changed it to 900,000.

Q. On November 19th, did you know of any other attacks on the Americans?

TC: Objection to relevance on that.

DO: Please translate what the witnesses before I do that. What did he say?

INTRPTR: He said "what's the question".

DO: Okay. The witness just asked what's the question. He doesn't understand.

Could you rephrase the question.

Questions by the defense (continued):

Q. Did you know of other attacks on the Americans?
A. After that event attacks happened, but the area was calm for six straight months.

Before this -- before the event, it used to be a lot of IEDs that was detonated by the American Forces.

Q. On November 19th did you see insurgents running through the palm groves?

INTRPTR: I'm sorry. I don't understand the last --

DO: I don't think he --

DC [LtCol Vokey]: Okay. Let me try a different question.

Q. Your house, is it near all of the palm trees?
A. Yes.

Q. And did you see insurgents, mujahideen running through the palm trees?
A. No.

Q. Did you hear about it?
A. No, I did not hear.

Q. You didn't have any idea that they were running near your neighborhood?
A. No, I did not hear.

Q. Did you know of the American plane that dropped a bomb

on a building that day?

A. On the third day of the event, one of the people told me that the American bombed one of the houses. It was about one and a half kilometers away from my house.

Q. And when did you hear about this?

TC: Objection. Hearsay.

INTRPTR: He said "All I heard is that the owner of the house and his wife survived, amazingly, that day".

Q. And did you hear why the attack happened?

TC: Objection. Hearsay again.

WIT: No, I don't.

Q. Did you know there were other IEDs found on that same day in Haditha?

A. I had no idea.

Q. Did you know that other Marines were wounded by attacks on November 19th?

A. I had no idea. Major Hyatt told me that the IED that caused the massacre, killed one Marine and injured others.

Q. After the IED on November 19th and after the two houses were cleared by the Marines, what did the Marines do?

A.

INTRPTR: Can I break --

DC [LtCol Vokey]: I'll shorten it.

Q. Did the Marines search other houses in your neighborhood that day?

A. They were on the rooftops of other neighboring houses according to what the owners of these houses told me.

Q. Did they search your house that day?

A. No. They did not search it.

Q. Did you know they were searching all of the houses in the area?

A. No, I did not.

Q. You didn't see this?
A. I saw them --

INTRPTR: I'm going to ask him to clarify that.

WIT: I saw them on top of some of the houses.

Q. Did any Marines come to the house you were at that day?
A. No, nobody came.

Q. Did the Marines go to your cousin's house?
A. No, I told -- 5:00 o'clock, the evening of that day, we left the area.

Q. Where did you go?
A. To my uncle's house, which is neighboring to my house. His name is Saheem Sayef (ph). And we spent the night at his house. We were afraid that the Marines would come back and kill us the same way. And we were flagging white flags -- we were carrying white flags.

Q. You went and saw the 24 bodies at the hospital?
A. Yes.

Q. And 15 of them belonged to you?
A. Yes.

Q. And did you know the other bodies that were there?
A. Just I know that these -- the other bodies belong to that house. And that house, the names I don't not know.

Q. Did you work with Major Hyatt a lot?
A. Yes.

Q. And what did you do with Major Hyatt?
A. On the second day when we buried the bodies, one of the people that work in Haditha Hospital came, he said the Americans would like to see one of the members of the victims.

Q. Okay. Let me stop you right there.

Did you deal with Major Hyatt before November 19th?
A. Yes.

Q. And what did you do with Major Hyatt before November 19th?
A. I was the local city council member, and we used to meet

every week -- approximately every week. That's how -- that's why I knew him.

Q. And you went to Major Hyatt to get the payments for the family?

TC: Objection. Relevance.

WIT: I went to see -- to know the fate of the two girls, Iman Waleed Abdul Hameed and Abdul Rahman, it's a boy and a girl. They still don't know where they are at. That's why I went to Major Hyatt, and he told me that they have them. And they are being treated at Ballot Hospital (ph).

Q. Okay. And later, did you work with Major Hyatt to get money for the people that died?

TC: Objection. Relevance.

WIT: He's the one who sent for it. We told them to have a universal investigation on this event and to lift the sanctions on the city, and to compensate the members of the family fairly.

Q. Isn't it true you were more worried about getting the money than the investigation?

TC: Objection. Relevance.

WIT: That's -- no. They always --

INTRPTR: I'm trying to figure out what he just said. He will rephrase.

DO: You are going to tell the witness to rephrase?

INTRPTR: I'm telling the witness to rephrase.

WIT: They used to tell us that we will pay you money for the people that got killed, and I used to insist on them -- for the investigation.

When the investigation team arrived, Major Hyatt told me you asked for the investigation, here are the investigators, and you have to cooperate with them. I told them I'm ready to cooperate.

Q. All right. I'm going to --

DC [LtCol Vokey]: We have to change the tape. Do we want to break?

DO: If you want to. Five-minute break? Okay; that's fine.

The deposition recessed at 1508, 22 February 2008.

The deposition opened at 1524, 22 February 2008.

DO: We are a back on the record it is approximately 1524.

Mr. Al-Anzi, I remind you that you are still under oath.

Counsel, you may proceed.

Questions by the defense (continued):

Q. Khalid, I want to ask you some more questions about your dealings with Major Hyatt.

TC: The government still objects to this line of questioning.

DO: And your objection is noted for the record.

Q. You had many conversations with Major Hyatt.
A. Yes.

Q. I'm going to ask you about one particular conversation; okay?
A. Go ahead.

Q. Do you remember when you did a video-taped interview for this case?
A. I did a number of interviews.

Q. Were they ever video-taped?
A. Yes, they were.

Q. Was there more than one?
A. You mean, with Major Hyatt?

Q. No. With anybody video taping.
A. With the -- just the media, they used to come to my house and interview me.

Counsel conferred with co-counsel.

Q. All right. Do you remember Major Hyatt saying to you --

DO: Interpreter, can you interpret what he said.

INTRPTR: "Major Hyatt" --

TC: I'm going to object to hearsay on that.

Q. "You always ask me for money, money, money, but when matters come to the investigation stage, you hesitate. So I told him it that was not I who hesitated in coming, but that's the families that refused to come."
A. When was the last time, sir?

Q. Do you remember saying that about Major Hyatt?
A. Not in this picture. He told me that you are asking for the compensation and the investigation. And he said I gave you a lot of money for the compensation. And here are the investigators, they are here, they came. I'm asking you to bring the families of the victim who went to -- to the place of the American Forces.

Q. Okay. Hold on.

DC [LtCol Vokey]: May I approach the witness?

DO: Yes.

DC [LtCol Vokey]: There may be an easier way to do this.

For the record, I'm going to hand the witness Page 29 of the transcript of this video-taped interview, which was provided discovery of 12 September '07.

DO: Shall we mark that as Exhibit 14?

DC [LtCol Vokey]: Yes, ma'am.

Questions by the defense (continued):

Q. Please take a look at the statement. On the right side it's in Arabic. Read from where I made a pen mark on the page and down to the next pen mark.

The witness did as directed

Q. Please read that out loud.
A. "He was asking me for money, money, money, but when things came to the investigation you are becoming hesitant. I told him that I'm not the one who was being -- but the family are refusing to come."

Q. Okay. Thank you.
A. Just to clarify this point.

Q. No, no, no. That's okay.
A. Excuse me.

DO: Please tell the witness that he just asked him to read this, so basically in the deposition he is only the answer the questions and to complete answering the question.

Did the witness completely finish reading where he asked him to read?

WIT: But this is not the complete answer.

DO: Okay. The question is: Did he complete reading the portion that the counsel had marked on Exhibit 14? Did he read that entire portion that was marked on the exhibit? Did he finish reading it?

INTRPTR: Are you asking me?

DO: Yes.

INTRPTR: Yes.

DO: Ask him to have that question.

WIT: Yes. I read it and I finished it.

DO: Thank you. Counsel?

DC [LtCol Vokey]: Okay.

Questions by the defense (continued):

Q. And you get paid money to work as a lawyer; right?
A. Yes.

Q. And you get paid money to be on the city council?
A. Yes.

Q. Do you get paid money for any other jobs?

TC: Objection. Relevance.

WIT: All I own is a library.

Q. Where is this library?

TC: Objection. Relevance.
A. Close to my house. I sell books and other -- like school supplies, and I'm in partnership with my cousin.

Q. Which cousin?
A. Jameed [inaudible] Sayif.

Q. Do you know how many cousins you have?
A. Approximately six.

DC [LtCol Vokey]: Ma'am, could I get Deposition Exhibit 10? I'm going to show the witness Deposition Exhibit 10.

Q. Is that your cousin in the picture?
A. I think that's Mohammed. The picture is not complete. It is not clear.

Q. Okay. You can't tell if it's your cousin?
A. His face is not visible.

Q. Okay. Did Major Hyatt complain to you that you never helped with the investigation?

TC: Objection. Relevance.

WIT: No. He did not complain.

Q. Never?
A. No. He was only asking me to bring the families of the victims to the base where the American Forces, and I kept telling him that bringing the families here is a very difficult matter. That's why we agreed, we agreed upon the meetings will be conducted at Haditha Hospital.

Q. Did Major Hyatt have to go through you to talk to the people -- the families in the houses?
A. No.

Q. Was there a letter to Major Hyatt or the Americans that made demands for payment?

TC: Objection. Relevance.

INTRPTR: Could you rephrase the question.

DO: The interpreter doesn't understand the question. Would you please rephrase it.

Questions by the defense (continued):

Q. Was there a letter demanding payments for people in the houses.
A. What letter?

Q. Do you know of any letter?
A. No.

Q. Did you write any letters to Major Hyatt or the Americans?
A. I did not write any letters other than signing on the receipt for receiving payment.

Q. When all the people in the houses were buried, you said they were martyrs. Why?
A. In our religion as Muslims, the one that killed the people is the occupier in a fighting where no military rules were shared, it was old men, females with kids. What do you call these people? What did they do to be killed like that?

Q. Okay. What does the word "martyr" mean?
A.

INTRPTR: I'm going to ask him to --

DO: -- slow down --

INTRPTR: -- slow down and explain.
A. They were killed, they did not -- they were not defending their money. They were sleeping in their houses and they were killed. What do you call them?

Q. What does the word "martyr" mean?
A. The meaning in the Koran for martyrs is a person that's killed by another religion without any reason, not mentioning the person that killed them is an occupier.

Q. Don't they call suicide bombers martyrs as well?

TC: Objection. Relevance.

WIT: No. They are not martyrs, they are suiciders.

Counsel conferred with co-counsel.

Q. After Major Hyatt paid -- made the payments to the families, did you make anymore demands for investigations?

TC: Objection. Relevance.

WIT: They already paid for all the 15 people, which is the families that belong to me. The other nine people, they refused. They told me that they were terrorists. And I stayed insisting for the subject -- on the subject for the investigations.

Q. And the other nine people that he refused were the four men in House 4, and the five men in the white car?

DO: Could you say that one more time. Actually is noise problem?

DC [LtCol Vokey]: I'll take care of it this time.

The defense counsel exited the hearing room.

The defense counsel entered the hearing room.

DO: Counsel you can ask.

Questions by the defense (continued):

Q. There were nine people that Major Hyatt wouldn't pay money for?
A. Yes.

Q. Four of them were from House 4?
A. Yes.

Q. And the other five were from the white car on the road?
A. Yes.

Q. Khalid, did you sign an affidavit for Major Cox?

INTRPTR: Could you explain what an affidavit is?

DC [LtCol Vokey]: Let me just approach the witness. We will mark this as the affidavit.

DO: It's going to be Exhibit 15.

DC [LtCol Vokey]: All right. I'm going to show the witness Exhibit 15, which is an affidavit signed by Khalid witnessed by Major Cox and Sergeant Mullis, and it's in English, but it has Khalid's signature.

Q. Do you recognize this?
A. For us to go to America, which we refused. We told them that we are ready to cooperate with the American Forces and to stay in Haditha.

Q. And is that your signature on the last page?
A. Yes.

Q. Okay.

DC [LtCol Vokey]: Retrieving it from the witness, and giving it to the deposition officer.

DO: Thank you.

Questions by the defense (continued):

Q. In that letter, you said that none of the witnesses would go to the United States.

TC: Objection vague.

DC [LtCol Vokey]: Please ask him for an oral response.

WIT: Yes. I told them, and they showed no interest to go to America.

Q. Did you ask everyone of the witnesses on that letter?
A. Yes, I told them. And they told me that they were refusing. Only one person whose name is Jameel Hamdi Aashoor told me before this event he doesn't want. Major Cox asked me -- he told me -- I told them I don't need to go back and say this to him because he previously answered me.

Q. Okay. And did you know that we spoke with Iman Abdul Rahman and Safah yesterday?
A. Yes.

Q. And you know they came in here and testified yesterday?
A. Yes.

Q. Did you know that Safah said no one ever asked her if she wanted to go to the United States?
A. We don't ask Safah because she is underage. We ask her parent or a person that's responsible for her.

Q. So you never asked her?
A. She is not a decision maker. The decision belongs to her uncles.

Q. Did you ever ask Safah?
A. No.

Q. Did you know that no one ever asked Safah?
A. They know.

Q. Did you understand that letter that you signed?
A. Yes.

Q. And that letter states that the witnesses refused to come.
A. Yes.

DO: Counsel, do you need an exhibit?

DC [LtCol Vokey]: We retrieved the exhibit, ma'am.

DO: Because if you are not showing an exhibit, you need to stay behind your area.

Do you need that one -- 15?

DC [LtCol Vokey]: Yes, ma'am.

WIT: But they accept cooperation in this case.

Q. And you knew what you were signing?
A. I'm a lawyer, and I know the value of signatures.

Q. And you signed saying that Safah will not travel to the United States?
A. According to the Iraqi law a person underage you should not consider his opinion or his decisions you have to go to the person in charge of him or his parents. And based on that, I --

Q. But you said in this letter that she will not travel.
A. Yes. She still does not want to travel.

Q. Have you ever asked her?

TC: Asked and answered is my objection.

WIT: I did not ask her, I asked her uncles. And when I talked about the subject, I talked to her uncles who was responsible for her. This is our customs and the way of the Iraqi law because she's underage.

Q. Did you ever ask Iman if she would travel to the United States?
A. I also talked to her uncle.

Q. Did he ever talk to Iman?
A. When I tell her to come over here -- to come here, she refuses. Of course, she is going to refuse if I tell her to go to America.

Q. But you didn't talk to Iman.
A. I talked to her because I'm her maternal uncle.

Q. Do you understand English?
A. Yes. Not too much, but in the law of matters, I need -- in this situation, I need an interpreter.

Q. Did you ever talk to Abdul Rahman?
A. Yes. I talked to him and I talked to Abdul Rahman's uncle.

Q. Did you ask Abdul Rahman if he would go to the United States?
A. I did not bring him last night until he cried all the tears that he had. And he told me of all the difficulties that he's in, it's his responsibility.

Q. Did you ever ask Abdul Rahman if he wanted to go to the United States?
A. How can I ask a little kid of his age?

Q. Yes or no? Did you ever ask?
A. No, I did not. I spoke with him, I spoke to his uncle.

Q. So this document, Deposition Exhibit 15 is not really true is it?
A. Why it's not true?

Q. Because you never talked to the witness.
A. This is not true.

Q. And you don't know if anyone else talked to Iman Abdul Rahman or his --

DO: Wait a second. He wasn't finished interpreting the last question.

Could you finish the interpretation.

INTRPTR: I'm going to ask him to repeat.

WIT: I did talk to their uncles and they are underage.

DO: Okay. Did you have a next question? Could you restate the question, please.

Questions by the defense (continued):

Q. You don't know if anyone talked to Abdul Rahman or Safah about going to the United States.

TC: Objection. That's a misstatement.

WIT: I'm going to repeat that I speak with the person in charge of her. And the person who is in charge or responsible for them are their uncles.

Q. But you say in this document that Iman Abdul Rahman, Safah won't travel to the United States.
A. They still don't want to travel.

Q. And Abdul Rahman testified yesterday, didn't he?
A. Yes.

Q. And Abdul Rahman told us that no one ever asked him. Do you know why?
A. He's a kid. He doesn't know what he's saying.

INTRPTR: I'm sorry. The last thing: "He's a kid, he does not value what he's saying."

Q. Were you acting as the lawyer for Safah in writing that letter?
A. I represented their opinion, and I went back to their uncles. I have an official authorization, and I told Major Cox about the so-called Jameel [inaudible] Hadeed

(ph), I do not have an official authorization for these two people. And he told me --

INTRPTR: Let me ask him.

WIT: -- he told me that I'm only a mediator between them and the American Forces.

DO: Counsel, when you said "that letter," are were you referring to Exhibit 15?

DC [LtCol Vokey]: I was. Yes, ma'am.

DO: Thank you. Just to clarify for the record, he is referring to Exhibit 15.

Questions by the defense (continued):

Q. And you represented other Iraqi people concerning the Americans?

TC [Maj Erickson]: Objection. Relevance and vague.

INTRPTR: Can you rephrase this question.

Q. Do you represent anyone else in getting payments from Americans?
A. No. Just a lawyer and people -- and I have relations with the Americas. They come and ask me to give proofs to the Americans. And they ask me questions about the situation of some detainees. But I don't receive money for any of that.

Q. Do you know any people in Haditha who have been arrested as mujahideen or insurgents?

TC: Objection. Relevance.

WIT: I don't know. Most of the detainees in Haditha are innocent.

Q. Most of the people that the Americans detained are innocent?
A. There are many innocent people in the prisons of the occupiers.

Q. How about Amad Juwad Hamsa. Is he innocent?

TC: Objection. Relevance.

WIT: I don't know if he's innocent. I did not see his file. I was -- the relationship we had is only that I was -- he was the head of the city council and I was a city council member.

DO: Would you please tell the witness that when you are trying to translate for him to stop because it makes it difficult for the court reporter to hear and for you to concentrate on the translation.

The interpreter did as directed.

Q. So you think most of the people the Americans detained are innocent?

TC: Objection. Relevance.

WIT: I think so. In the nature of every society, there is the guilty ones and there are the innocents.

Q. Somebody is attacking the Americans in Haditha, it happened.

TC: Objection, relevance.

WIT: I don't know anything about that.

Q. Do you know that the Americans have been attacked a lot in the last couple of years?
A. Anybody can see this on TV -- they can see this.

Q. Do you know the name of the road where the IED went off on 19 November?
A. We don't have names for the streets here, but the streets that leads to the Alhay Alaskary.

Q. I want to ask you another question about another place on that street. Do you know about a house that the Americans bulldozed to the ground?

TC: Objection, relevance.

WIT: I don't know.

Q. Do you know a house that the Americans destroyed on that street in your neighborhood?

TC: Objection, relevance.
A. Yeah. There was a house in my neighborhood.

Q. And who owned that house?
A. A person from Baghdad, but nobody occupied the house. It was vacant.

Q. Was that house owned by Akuba Naffa (ph)? You don't know who lived in that house?

INTRPTR: He didn't get the --

DC [LtCol Vokey]: Oh, I'm sorry.

INTRPTR: -- I'm going to ask him to tell me.

WIT: I don't know Akuba. I don't think his name is Akuba. There was a house in that direction, his name is Naffa, not Akuba.

Q. Who is Naffa?
A. An old man that died one month ago or a few months ago. And it was just him and his wife that lived in the house.

Q. And why was that house destroyed by the Americans?

TC: Objection, relevance.

WIT: I don't know the reason, but they came to the area and they asked for the doors and the windows to be open because they said there's going to be a big explosion. We asked them about the reason why the house is going to be bombed. They said they found weapons in that vacant house and they bombed the place. Our houses were affected by that explosion.

Q. And your house is not very far away from this?
A. About -- distance-wise, 50 meters.

Q. And did you know that there were IED and bomb material in that house?
A. Of course not. I'm a known lawyer and I am in the city council. How would I allow something like that -- or how would I accept something like that?

Q. Did you see anybody going into that house?
A. No, I did not see.

Q. The house is only 50 meters from your house?
A. Yes, 50 meters away from my house.

Q. So you do you think the bomb making material got into that house?

TC: Objection. It calls for speculation.

WIT: I don't know.

Q. No idea?
A. No. No idea.

Q. But that's your neighborhood.
A. It's a vacant house. I had no idea why.

Q. But that's very close to your house.
A. It's not within my sight. We are in an alley, and the street of that house is on a main street.

Q. And you lived in your house your whole life?
A. Yes.

Q. And you know all of your neighbors?
A. Yes.

Q. And you didn't hear anything about bomb making material in that house?
A. No. I swear I didn't, and I'm under the oath. I'm a guy that goes to his work early in the morning and come back later in the day.

Q. Have there been other IEDs found on that road?

TC: Objection, relevance.

WIT: No, there wasn't. From time to time, the Americans used to come by the bridge, and before the event in about a month they found an IED on the main street. And the American detonated that bomb on this main street.

Q. On November 19th, did you hear other bombs and firing other than your neighborhood?
A. In my area that's what I heard is the big explosion. And the noncontinuous firing. And we heard a far away explosion sound far from my house. This is what happened.

Q. How many big explosions have you heard in Haditha since the Americans came?
A. How can a person know this? From time to time, we hear explosions.

Q. On November 19th the explosion woke you up, didn't it?
A. Yes.

Q. Very loud?
A. Yes.

Q. Did you actually see any Marines shoot anyone?
A. No.

Q. And you were staying in your house when that happened?
A. Yes. I went to the garden of the house, then I went back.

Q. And that day, did you go anywhere else?
A. In the afternoon I went for my -- to my uncle's house to know what happened up there. My cousin, Yaseem, told me that the American Forces killed all the people that were in that two houses.

After that, around 5:00 o'clock we decided to leave the area --

Q. Okay.
A. -- because we were afraid.

Q. Did you see the man who was shot outside near House 1?
A. No.

Q. Was Rasif killed that day?
A. What do you mean?

Q. I'm sorry. Was Rasheed killed that day?
A. Yes. I heard from my cousin that Rasheed was laying on the mountain, but I did not see him with my only eyes.

Q. Did you hear how he was killed?
A. We were just guessing that one of the snipers killed him.

Q. Do you know why he was running away?
A. As I understood from my cousins, he wasn't running away, he was trying to come to us, asking for help. My cousin told me that.

Q. Did your cousin see this?
A. He said I heard that. I heard him saying that the American killed my family, come to me.

Q. What is this cousin's name?
A. Mohammed Salim Sayif.

DC [LtCol Vokey]: Ma'am, I want to retrieve some of the deposition exhibits.

Okay. I'm going to hand the witness Deposition Exhibits 1 through 11. Please just take a look, quickly, at the pictures.

WIT: One after another?

DC [LtCol Vokey]: Yes.

The witness perused the photographs.

DC [LtCol Vokey]: I'll retrieve the exhibits from the witness.

Q. Now, are those the pictures that you had taken?
A. I did not take them. I brought someone with me.

Q. Who was the photographer?
A. I cannot tell you his name.

Q. Do you know his name?
A. No, I don't know. He asked me not to say and --

Q. Where did you find?

DO: Excuse me. Did the witness say he does not know his name, or, No, he cannot say it? I mean, I just want to make sure that we clarify, for the record, his testimony.

Please say that.

WIT: He told me not to mention his name.

DO: My question is to clarify for the record was he told his name or does he know his name.

WIT: I know his first name, he works as a photographer.

Questions by the defense (continued):

Q. Where did you find this photographer?
A. He photographed and moved around in Haditha.

Q. And did you tell him what to take pictures of?
A. Yes. And that's why he told me not to mention his name.

Q. And did you walk in the house and point to what the picture was going to be?
A. I told him, you know, I'm not a professional picture taker. But I told him to take a picture of this place, that place.

Q. And did you see him take each of those pictures?
A. Many people came and photographed the place.

DO: He was nodding his head, but he didn't say a "yes or a no" to that question. I want you to remind the witness that he needs to make sure that he gives a "yes or no" response and not just shake his head because that's not going to come out in the translation.

The interpreter did as directed.

DO: Counsel, did you want to ask that question again or did that --

DC [LtCol Vokey]: I'm sorry. I did not hear what you just said.

DO: I was telling him to remind the witness to give a "yes or no" response and not to just nod his head. He was nodding his head, but the yes or no did not come from the interpreter because it was not said.

So I was asking you did you want to ask that question --

DC [LtCol Vokey]: Well, ma'am, I have another question.

Questions by the defense (continued):

Q. Who else was with you and the photographer when you were taking those pictures?
A. At that time it was just me ask the photographer only.

Q. You have done a lot of interviews with the media haven't you?

TC: Objection, relevance.

WIT: During the event, no. But after a while when the investigation started.

Q. Who made the video movie of the bodies?

TC: Objection, relevance. I also object to vagueness too.

WIT: I don't know.

Q. Do you know what video I'm talking about?
A. I don't know. You said the "pictures of the bodies". I said, I don't know.

Q. Did you ever see a video of the bodies on television?
A. Yes. It was broadcasted on the news channels in the hospital when we took the body -- we drive the bodies [sic].

Q. And who took that video?
A. I don't know the person.

Q. You don't know anything about that video being taken?
A. I was very, very -- I was busy with taking the bodies and putting them in the car. I was shocked.

Q. But you were there when it was being taken?
A. I don't know who was video taping.

Q. Safah was on television too, wasn't she?
A. I think so.

Q. Were you there when she was being interviewed on TV?
A. One of the times, yes.

Q. There was more than one time?
A. I heard they came again.

Q. Were you there when the television interviewed Iman and Abdul Rahman?
A. One of the times, yes.

Q. Were you working as a lawyer by being there?
A. They were my relatives also, so they were part of the victims.

Q. Who else in the media have you talked to?

TC: Objection, relevance.

WIT: Many news channels. One of the people, I asked who do you represent and he said I worked for Reuters, so we brought a class for many channels.

Q. Did you know that insurgents make propaganda films?
A. I did not understand that question.

DO: Okay. I just want to make sure for the record, counsel, you interpose an objection; correct?

TC: I did, ma'am.

DO: Okay. Did you get that?

Can you please make sure that your voice is a little bit louder, so we can hear it for the record.

TC: Yes, ma'am.

DO: Thank you.

Questions by the defense (continued):

Q. Major Erickson asked you if you were willing to come to the United States.
A. Yes.

Q. And you said that you needed to talk to the uncles.
A. My uncles are uncles of Abdul Rahman and Safah. We are as a big family, we have to make the final decision.

Q. But you're a big important lawyer, you don't have to ask their permission to come to the United States, do you?
A. As far as me, I don't need anybody's opinion. But as far as Abdul Rahman and Safah Iman, they have to take the permission of their family. If they don't go then I don't go.

Q. Why?
A. I cannot go and see a country that killed my family unless I have to. This is my satisfaction, not because I'm a lawyer, it's because I'm a human who lost 15 people.

Counsel conferred with co-counsel.

Q. Do you know Doctor Waleed?
A. Yes.

Q. Do you remember an attack on the Americans that came from the hospital?

TC: Objection, relevance.

WIT: I don't know.

Q. Do you remember an attack on the Americans from a hospital on May 15, 2005?

TC: Objection, relevance.

WIT: I don't remember.

DO: Would you please remind the witness to speak up louder because we need to get -- even though you can see what he's saying, you need to get the audio on the camera.

The interpreter did as directed.

DC [LtCol Vokey]: I'll ask the question again.

DO: Thank you.

Questions by the defense (continued):

Q. Did you know about the attack on the Americans from the hospital on May 15, 2005?

TC: Objection, relevance.

WIT: You mean, the hospital attacked the Americans?

Q. Yes.
A. I did not hear something like that. I heard years ago that there was a car bomb that exploded near the hospital. I did not see it with my own eyes.

On the other hand, the Marines are the ones who attacked the hospital, and they burned a big section of it. This is what I remember.

Q. So you do know about this?
A. We were seeing an attack. All I remember is the topic about the car bomb. I heard about it, and I did not see it with my own eyes.

Q. And this was Haditha Hospital?

A. Near Haditha Hospital.

Q. And that's where Doctor Waleed works?
A. He's the general manager of Haditha Hospital.

DC [LtCol Vokey]: No more questions.

DO: Does this raise some questions for you, counsel?

TC: I would like to take an in-place recess for about two minutes if we could.

DO: Actually, let's take a little bit longer.

TC: Yes, ma'am.

DO: Okay. Ten minutes.

The deposition recessed at 1638, 22 February 2008.

The deposition opened at 1656, 22 February 2008.

DO: We are back on the record.

Mr. Al-Anzi, I will remind you that you are still under oath.

Counsel, before we adjourned, you said that you were finished; is that correct?

DC [LtCol Vokey]: That's correct, yes, ma'am.

DO: Counsel, do you have some questions interpose?

TC: No, ma'am.

DO: Okay. So is it correct to say that both of you are finished questioning this witness?

TC [Maj Erickson]: Yes, ma'am.

DC [LtCol Vokey]: Yes, ma'am.

DO: Is this witness subject to recall, counsel?

TC [Maj Erickson]: Please tell the witness that he is subject to recall.

The interpreter did as directed.

DO: And is there a time when he's going to be recalled or a date?

TC: I will have to get with him later, ma'am. I would like him here on Saturday, tomorrow at 0900 with the kids.

DO: Okay. Could you please translate that.

The interpreter did as directed.

AFFIDAVIT

I Khalid Salman Rasif Hussayn submit the following affidavit of my own free will without any threats made to me or any promises extended to me. I swear and affirm that the following statement is the truth to the best of my understanding, knowledge and belief. I fully understand the nature of the oath administered to me by Major David C. Cox, Battalion Judge Advocate, 3d Battalion, 23d Marine Regiment, AO Triad (Hadithah), Iraq, and the requirement this oath imposes on me to be truthful and accurate to best of my ability with all of the information provided herein.

I know Allah Almighty to be present and looking at me, by my faith I promise that what I shall state, shall be the truth and that without concealing anything I shall state the truth, the whole truth, and that I shall state nothing except the truth. And Allah is my witness.

The following information contained within this affidavit is the truth to the best of my ability.

Abd Al-Rahman Waleed Al-Hameed currently resides in Hadithah, Iraq and is a person known by me. Abd Al-Rahman Waleed Al-Hameed will fully cooperate with the American investigation into the deaths of Iraqi civilians which occurred on 19 November 2005 in Hadithah, Iraq, by answering questions under oath at a deposition if the deposition is held in Hadithah, Iraq. Abd Al-Rahman Waleed Al-Hameed will not travel to the United States to testify at any General Courts-Martial now or in the future due to his young age of eleven years old and the concerns his family has for his personal safety and the safety of the other members of his family.

Eman Waleed Abd Al-Hameed currently resides in Hadithah, Iraq and is a person known by me. Eman Waleed Abd Al-Hameed will fully cooperate with the American investigation into the deaths of Iraqi civilians which occurred on 19 November 2005 in Hadithah, Iraq, by answering questions under oath at a deposition if the deposition is held in Hadithah, Iraq. Eman Waleed Abd Al-Hameed will not travel to the United States to testify at any General Courts-Martial now or in the future due to her young age of twelve years old and the concerns her family has for her personal safety and the safety of the other members of her family.

Safah Yunis Salim Rasif currently resides in Hadithah, Iraq and is a person known by me. Safah Yunis Salim Rasif will fully cooperate with the American investigation into the deaths of Iraqi civilians which occurred on 19 November 2005 in Hadithah, Iraq, by answering questions under oath at a deposition if the deposition is held in Hadithah, Iraq. Safah Yunis Salim Rasif will not travel to the United States to testify at any General Courts-Martial now or in the future due to her young age of sixteen years old and the concerns her family has for her personal safety and the safety of the other members of her family.

Khaled Jamal Aiad Ahmed currently resides in Hadithah, Iraq and is a person known by me. Khaled Jamal Aiad Ahmed will fully cooperate with the American investigation into the deaths of Iraqi civilians which occurred on 19 November 2005 in Hadithah, Iraq, by answering questions under oath at a deposition if the deposition is held in Hadithah, Iraq. Khaled Jamal

Aiad Ahmed will not travel to the United States to testify at any General Courts-Martial now or in the future due to his young age of seventeen years old and the concerns his family has for his personal safety and the safety of the other members of his family.

Battal Ahmed Mahmood currently resides in Hadithah, Iraq and is a person known by me. Battal Ahmed Mahmood will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Battal Ahmed Mahmood will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

Ehab Ayad Turki Wagga'a currently resides in Hadithah, Iraq and is a person known by me. Ehad Ayad Turki Wagga'a will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Ehad Ayad Turki Wagga'a will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for her personal safety and the safety of the other members of her family.

Hameed Flaeh Hassan currently resides in Hadithah, Iraq and is a person known by me. Hameed Flaeh Hassan will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Hameed Flaeh Hassan will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

Jameel Mahmood Aashoor Lateef currently resides in Hadithah, Iraq and is a person known by me. Jameel Mahmood Aashoor Lateef will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Jameel Mahmood Aashoor Lateef will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

Jameel Avada Abid Hussayn currently resides in Hadithah, Iraq and is a person known by me. Jameel Avada Abid Hussayn will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Jameel Avada Abid Hussayn will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

Nagham Fawwaz Suliman Rejab currently resides in Hadithah, Iraq and is a person known by me. Nagham Fawwaz Suliman Rejab will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Nagham Fawwaz Suliman Rejab will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for her personal safety and the safety of the other members of her family.

Najla Abd Al-Razak Hamed currently resides in Hadithah, Iraq and is a person known by me. Najla Abd Al-Razak Hamed will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Najla Abd Al-Razak Hamed will not travel to the United States to testify at any General

Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for her personal safety and the safety of the other members of her family.

Shams Al-Deen Dawwud Mohammed Khalil currently resides in Hadithah, Iraq and is a person known by me. Shams Al-Deem Dawwud Mohammed Khalil will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Shams Al-Deem Dawwud Mohammed Khalil will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

Yasin Salim Rasif Hussayn currently resides in Hadithah, Iraq and is a person known by me. Yasin Salim Rasif Hussayn will cooperate in a deposition if the deposition is held in Hadithah, Iraq. Yasin Salim Rasif Hussayn will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges, as well as concerns for his personal safety and the safety of the other members of his family.

I, **Khalid Salmad Rasif Hussayn**, currently reside in Hadithah, Iraq. I will cooperate in a deposition if the deposition is held in Hadithah, Iraq. I will not travel to the United States to testify at any General Courts-Martial now or in the future because of concerns about the nature of the charges and the impact the charges have had on my family.

Signature ______________

Sworn to me this 10th day of December in the year 2007 at Hadithah, Iraq.

David C. Cox
Major, USMC
Bn Judge Advocate
3d Battalion, 23d Marines

Witness:

Russell S. Mullis
Sergeant, USMC
Chief, Civil-Military Operations Center, Team 1
5th Battalion, 10th Marines